

Kershner v. Kolison
Motion for Preliminary Injunction

Decl. Adam Steinbaugh

EXHIBIT 10

IN RE: PODCAST TRANSCRIPT

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BRAIN IN A VAT
SEXUAL TABOOS STEPHEN KERSHNAR

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1 Sexual Taboos Stephen Kershner

2 MARK OPPENHEIMER: Welcome to
3 Brain in a Vat. Today we are delighted
4 to be joined by Stephen Kershner from
5 Fredonia State University in New York.
6 And we're going to be talking about
7 sexual taboos. Stephen, would you like
8 to start with a thought experiment?

9 STEPHEN KERSHNER: Imagine that an
10 adult male wants to have sex with a
11 twelve year old girl. Imagine that
12 she's a willing participant. A very
13 standard, very widely held view that
14 there's something deeply wrong about
15 this, and it's wrong independent of it
16 being criminalized. It's not obvious to
17 me that is, in fact, wrong. I think
18 this is a mistake, and I think that
19 exploring why it's a mistake will tell
20 us not only things about adult child sex
21 and statutory rape, but also about
22 fundamental principles of morality.

23 JASON WERBELOFF: So I'm assuming
24 that some people think it's
25 fundamentally wrong because they would

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2 disagree with that initial statement,
3 which is, there's a twelve year old
4 who's willing. It seems to me like
5 there are clear cases where twelve year
6 olds would be unwilling, but they might
7 argue that there's no cases where a
8 twelve year old is willing. So they
9 might say that a twelve year old just
10 can't be willing in that situation.
11 They don't understand what sex is. They
12 don't have the requisite knowledge, they
13 don't understand the consequences. And
14 so they're not really willing to engage
15 in that act because they don't
16 understand what they're willing to
17 engage in.

18 STEPHEN KERSHNAR: Sure. So there
19 could be two ways someone could
20 structure this objection. They might
21 think that children can't be willing
22 things in general. It's an odd view in
23 that they seem to will things all the
24 time. They will participation in
25 kickball, they will showing up,

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2 participating in the bar mitzvah
3 lessons, bat mitzvah lessons. So
4 there's all sorts of things that they
5 will. You might think, well, maybe
6 there's something distinct about sex
7 that they can't really understand it.
8 It's not clear to me that what they're
9 not getting at is consent. I suspect
10 what they want to say is, okay, they're
11 willing participants to voluntary
12 participants, they have some
13 understanding what's going on. Not
14 understanding we do, but some
15 understanding. But they haven't
16 consented. Perhaps that's so, but
17 that's a different claim from they're
18 being unwilling. There's just lots of
19 activities that children engage in that
20 they don't understand all that well.
21 For example, when you first show up to
22 participate in a judo tournament or you
23 prepare for your bat mitzvah, you have a
24 rough idea, but it's not clear how much
25 you fully understand it.

1 Sexual Taboos Stephen Kershner

2 MARK OPPENHEIMER: Yeah, it seems
3 to be the case that the view is that
4 there must be a high level of informed
5 consent to engage in sex. And people
6 tend to think that there's some
7 threshold at which you are deemed to
8 have it. So governments have things
9 like statutory rape laws and those
10 change depending on which district
11 you're in. In America, for example,
12 from a few hundred miles, you can cross
13 different states and they have very
14 different rules in some places it might
15 be 16 and some it might be 18. So
16 there's some level of arbitrators about
17 it. But what it's been trying to
18 capture is this notion that even if it
19 seems like you're giving consent, the
20 consent should be set aside. So why do
21 you think the consent ought not to be
22 set aside?

23 STEPHEN KERSHNER: So the problem
24 with the consent aside is if consent
25 were set aside, then it's unclear why we

1 Sexual Taboos Stephen Kershner
2 could do anything with children. Why is
3 it that we're able to make them to go to
4 the sister's ballet recital? Or why is
5 it that we have them run cross country
6 or take certain classes or have certain
7 medical treatment? So if consent were
8 really necessary, it's not clear that we
9 could do anything with children, and
10 especially those things that are not in
11 the child's interest, like go to the
12 family Thanksgiving ceremony. So that's
13 kind of a high bar would rule out most
14 of what we do with children. And with
15 regard to American statutory rape law, I
16 think you're being way too kind.
17 American statutory rape law is just all
18 over the map. Depending on the state,
19 the age of consent is 18, 17 or 16.
20 Some states have Romeo and Juliet laws,
21 which mean if you're in a three-year or
22 four-year window, you're protected, some
23 don't. It's just all the map. Some
24 punish it harshly, some punishment not
25 at all. On one estimate, there are 7.5

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2 million instances of statutory rape that
3 occur every year in the US. And only
4 0.2%, a tiny fraction come to the
5 attention of the law enforcement. So
6 follow the map -- and then you have all
7 these bizarro paradoxes. You have cases
8 where two people can both be convicted
9 of statutory rape for having sex with
10 each other, or a man has sex with his
11 legal wife, takes a video of him having
12 sex with his wife, and he's now
13 convicted of federal child pornography
14 statutes. So these statutes just all
15 over the map. They're inconsistent.
16 They're pursued at a very uneven manner
17 and they're sentenced in a very uneven
18 manner. So while I think you make a
19 good point that American statutory rape
20 law is vague, it's worse than vague,
21 it's just all over the map inconsistent,
22 arguably.

23 JASON WERBELOFF: I want to
24 suggest some kind of limiting case
25 argument to try and get to the twelve

1 Sexual Taboos Stephen Kershnar
2 year old being in a position where she
3 can't give consent. So let's start with
4 a one year old. So would you agree that
5 having sex with a one year old, the one
6 year old could never give consent and it
7 would always be impermissible? Would
8 you agree with that to start? And then
9 my goal will be to move you up right, is
10 to say, well, if one it's not okay, at
11 two it's not okay, three it's not okay.
12 At what point does it become okay?
13 There's some point at which it's not
14 okay, and some point where it does
15 become okay, but just below that it's
16 not okay. And then at that point I want
17 to stick there and say, okay, well,
18 that's where our law should stick.

19 STEPHEN KERSHNAR: Right. So
20 there's a couple of things to say here.
21 One is, even if you are looking for a
22 threshold, let's say there's a
23 threshold, I'm making this number up,
24 but let's say it's at age eight still,
25 that tells you that some adult child sex

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2 is permissible. Second, the notion that
3 it's wrong even with a one year old is
4 not quite obvious to me. There are
5 reports in some cultures of grandmothers
6 fellating the baby boys, to calm them
7 down when a colicky.

8 Now, I don't know if it's true,
9 but this is sort of why they report it
10 as occurring in at least one culture and
11 it working that the grandmothers believe
12 this actually works. If this were to be
13 true, and again, I don't know it to be
14 true. If it were to be true, it's hard
15 to see what would be wrong with it. So
16 yeah, I guess I think no, I don't think
17 there's a blanket period beyond which
18 this is permissible. If we're
19 interested in willing participation,
20 which is the way I structured it, then
21 yeah, there's a point below which people
22 aren't willing participants in anything
23 because they don't have intentions or
24 they don't have the sort of mental
25 states that allow for willing

1 Sexual Taboos Stephen Kershner
2 participation. But no, I don't think
3 it's blanket wrong at any age.

4 MARK OPPENHEIMER: So David
5 Benatar wrote this piece on two
6 different views of sexual ethics and he
7 says the one view is the casual sex
8 view, which is that sex is like any
9 other pleasure, it's like eating
10 chocolate and therefore there's nothing
11 wrong with engaging in premarital sex.
12 And the other view is the significance
13 view, which is that in order to for any
14 sex to be moral, it has to be of a
15 certain level of significance. It must
16 be meaningful. It might be that you
17 think that the sufficient level of
18 meaning is that you're married, might be
19 that you're in a committed relationship,
20 but it is a significant activity in and
21 of itself. And one of the implications
22 he thinks of the casual sex view is that
23 it becomes quite hard to explain the
24 wrongness of pedophilia. So if, as you
25 mentioned, there are all sorts of things

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2 that we make children do against their
3 will. So you have to brush your teeth,
4 you have to go to bed by a certain hour,
5 you have to go to school, you have to go
6 to Thanksgiving and endure kisses from
7 your grandma and we're doing it because
8 we think it's good for you and maybe
9 you'll learn to like it. The argument
10 is, well, if sex is like any other
11 pleasure and maybe you can even have a
12 situation where there's some level of
13 enjoyment from the child. In other
14 words, at a superficial level, there's a
15 physicality and as you said, the baby is
16 sedated after the activity and you might
17 argue that it's more like a medicalized
18 thing there as opposed to a sex act with
19 the grandmother. The grandmother is not
20 doing it for her own titillation, it's
21 to coddle the child. But there is
22 sexual activity that's going on, I
23 suppose. So, it seems that if those
24 that are uncomfortable with the adult
25 child sex but also want to hold on to a

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2 casual sex view because that's the
3 general view that they might have about
4 ordinary sex, they've got a tension and
5 maybe they have to pick between these
6 two positions or they've got to live
7 with this difficult contradiction.

8 STEPHEN KERSHNAR: Yeah, I think
9 that's a great point and David Benatar's
10 work is always worth hearing and
11 interesting. That said, I do not agree
12 with the significance view, and I think
13 there's several ways you can see it's
14 false. Here's one way to see it.
15 Imagine you try to pick out what's the
16 wrong maker when someone has casual sex?
17 It doesn't seem that there's a right
18 infringement, right? Both people waive
19 their right. If they waive their right
20 against a claim for noninterference,
21 it's hard to see what's wrong if there's
22 no right infringement. And maybe a
23 little more formal about the argument.
24 If something's wrong, then it seems to
25 wrong someone. To wrong someone

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2 infringes a duty that you owe them a
3 duty you owe someone is just a claim.
4 On a whole feldian taxonomy, a claim is
5 just a right. So if it's wrong, then
6 you infringe on someone's right.
7 There's no right infringement. But even
8 if you thought there was some other
9 function, like it's degrading or it's
10 exploitative or it's objectifying, it's
11 a little hard to see how any of these
12 are present that are not present in
13 other activities. There's not really a
14 transaction here, so it's not really
15 exploitative. As far as objectifying, I
16 fail to see how it's different than a
17 wrestling match or a judo match and
18 you're participating with someone for
19 some activity. What else would
20 distinguish the two? So it's hard to
21 see what the wrong maker is.

22 Now, perhaps someone said, okay,
23 well, maybe not -- it's not wrong, it's
24 bad. But again, the same sort of use,
25 parallel arguments. It's hard to see

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2 that it sets back the well being of
3 either individual. So it doesn't seem
4 to be a bad maker, it doesn't seem to
5 disrupt what people deserve. It doesn't
6 lessen deserted just well being. It
7 doesn't lessen the objective goods we
8 have in life; love, autonomy, virtue,
9 knowledge. So it's hard to see why it's
10 bad. Perhaps someone says, well, okay,
11 it's not wrong, it's not bad, but it's
12 meaningless. Well, I actually doubt
13 that there is such a feature of
14 meaningless independent of what's good
15 or simplicity or what's good for you.
16 But even if I'm wrong about that,
17 usually what's meaningful is the idea
18 that you take pleasure in those things
19 that are worthy of pleasure. Well, this
20 begs the issue, right? It begs the
21 question. Why isn't this worthy of
22 pleasure. So I guess I think it's not
23 wrong, it's not bad. I don't think
24 meaninglessness is a real category, but
25 if it were, it's probably satisfied. So

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2 I just don't think that Benatar's
3 approach is correct.

4 MARK OPPENHEIMER: So I just want
5 to give a couple of further cases that
6 if you commit yourself to a casual sex
7 view, you might have to bite other
8 bullets. Benatar, by the way, it just
9 says these are the two views and these
10 are the implications for both views. It
11 doesn't actually put you in favor of one
12 or the other.

13 STEPHEN KERSHNAR: Right.

14 MARK OPPENHEIMER: So here's the
15 other problem, is that if you have a
16 casual sex view, you might think that
17 rape is wrong, but it's hard to explain
18 the extent of the wrong. So if I can
19 force you to do other things against
20 your will, like go to sports practice
21 some of the other things I mentioned
22 earlier, we think it's wrong to violate
23 your consent. But what's special about
24 sex? If sex is like any other pleasure,
25 well, is it that bad? So most people

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2 take the view that rape is a very bad
3 wrong and it seems like a casual sex
4 view or the kind of view you're
5 articulating means that maybe it's a
6 mild wrong. The other kinds of cases
7 would be where you don't have the
8 experience of a harm. So you can
9 imagine someone who's in a coma and you
10 have sex with them and they never find
11 out about it. You might say, well, this
12 is a perfectly moral activity. The one
13 person's having a jolly good time that
14 might be a particular fetish that they
15 have. They really enjoy having sex with
16 people with comas maybe to the extent
17 they don't want to have sex with anyone
18 else and the coma patient never finds
19 out. Assume that they're incapable of
20 falling pregnant, there'll be no
21 consequences for them. They're not
22 going to pick up an STD. The ordinary
23 moral intuition is that this person has
24 been raped and that's something
25 extremely wrong.

1 Sexual Taboos Stephen Kershnar

2 STEPHEN KERSHNAR: Right. So two
3 excellent points. So the first issue is
4 how do you account for the wrongness of
5 rape? I don't think this is distinct to
6 rape. There's an issue here. How do we
7 in generally, why is it worse to commit
8 a murder than a rape? Worse to commit a
9 rape than an aggravated battery, worse
10 to commit an aggravated battery than a
11 burglary, and worse burglary than a
12 petty theft. On the best accounts of
13 non-consequentialism, I think there's
14 two ways you can fill it out. One is on
15 the identity of the right that's
16 infringed, or second is the extent to
17 which the right is infringed. And so
18 whatever mechanism you use there to
19 explain why battery is worse than
20 burglary, I think you can use it here.
21 Either it's a more fundamental right,
22 the right to your body versus the right
23 to your property, or it's set back to a
24 much greater degree. And it's set back
25 in the sense that the interference with

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2 your either interest or autonomy is that
3 much greater. And as such, that's why
4 we think that rape is such a severe
5 wrong. So I'm not sure that there's
6 anything distinctive in the context of
7 rape that prevents us from explaining
8 the wrongfulness of the activity.

9 As far as the coma case, there's a
10 real issue as to how rights operate in
11 the context of comas, and the reason for
12 that is the person does not have a
13 setback to an interest or autonomy. And
14 so we say, okay, well, they have their
15 rights anyway, but it's actually a
16 little hard to see why that's the case.
17 It is true that other people who are
18 similarly situated have interest and
19 autonomy but it's not clear why the
20 comatose person does. But imagine,
21 okay, look, they still have rights even
22 though they're no longer justified by
23 interest or autonomy -- not to agree
24 with that, but let's say someone thought
25 that, okay, well if that were the case

1 Sexual Taboos Stephen Kershner
2 then that would explain why it's wrong
3 to have sex with someone in a comatose
4 state. But again, I don't think there's
5 any distinctive here. Is it wrong to
6 take a comatose person's property? Is
7 it wrong to paint them with funny
8 mustache or to dress them up in ways
9 that they would find truly offensive?
10 If you have rights independent of
11 interest or autonomy then all these
12 things can be wrong and whatever
13 justifies the right at this point in
14 time is going to justify why it's more
15 wrong to have sex with a comatose person
16 than to take their thing. But again,
17 it's a little hard to see what exactly
18 is the wrong maker there. So pretty
19 much everyone has the view that there's
20 something really wrong and bad going on
21 in Kill Bill with a bride but when
22 actually try to fill it out it's
23 actually surprisingly difficult.

24 JASON WERBELOFF: So far we've
25 focused on the wrong maker being consent

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2 based or being rights based. So it's
3 down to logical but as the resident
4 utilitarian I want to push for
5 consequences, right? So I want to say,
6 well, the reason it's wrong to have sex
7 with the twelve year old is it's going
8 to have negative consequences. Now I
9 know your obvious response to that is
10 going to be but sometimes it won't. So
11 you're going to say something like
12 sometimes the twelve year old enjoys it,
13 learns something from it, has a good
14 time and it doesn't have a negative
15 consequence in their life.

16 And there's two ways one can
17 respond to that. So the one is by
18 saying well actually it's negative
19 consequences but the child misreports
20 them. So that's to deny the empirical
21 claim. But the other route which I want
22 to take is to say when the consequences
23 are negative, they're dark. And so
24 because there is a significant
25 probability of those consequences

1 Sexual Taboos Stephen Kershner
2 happening, you shouldn't engage in the
3 act, because if that child has a bad
4 time, it could scar them for life. And
5 that is enough of a risk that it would
6 explain the wrongness of the adult child
7 sex interaction.

8 STEPHEN KERSHNER: Great. So let
9 me take the first one, the empirical
10 claim first. Here, it's actually quite
11 murky. There's a pair of studies by
12 Bruce Rynd and some others that kind of
13 looked at the long term consequences of
14 adult child sex and what they discovered
15 is something like -- and again these
16 studies are highly controversial,
17 there's enormous debate over how they're
18 put together. But -- so roughly about
19 74% of males reported they had kind of a
20 positive or neutral view after, and I
21 think 45% of females this is well after
22 reported like a positive or neutral
23 view. And then anecdotally things are
24 all over the map on this. And same
25 thing with the people who engaged in

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2 statutory rape during their teenage
3 years; probably involved something like
4 hebephilia rather than pedophilia. So
5 it's just not clear that these things do
6 have negative consequences in general
7 and it's even worse because you might
8 think the negative consequences are in
9 part affected by the negative view
10 society has for these things, right? In
11 the same way that society has very
12 negative views towards interracial
13 relationships there might be a certain
14 amount of suffering or pain because of
15 disapproval. And in addition, you're
16 right, I am going to say well out of
17 most shows that it's wrong in some
18 cases, not in others. And yeah, so
19 that's not going to produce a blanket
20 ban. In addition, on a utilitarian
21 balance you have to look at the positive
22 and the negatives. But let me take the
23 risk case. You're saying, look, we
24 could look at the expected utility or
25 perhaps another way to put it is to look

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2 at the risk.

3 A couple of things I want to say
4 here. One is that I don't think risk is
5 itself a wrong maker. I think risk is a
6 risk that you perform a wrong action.
7 That is probabilities themselves don't
8 make our lives go better or worse. So I
9 don't think that probability themselves
10 directly play into the rightness or
11 wrongness of an action.

12 I actually think what they go
13 toward is blameworthiness, right? Are
14 you blameworthy for doing this? And
15 yeah, it might be the case that if the
16 risk is large enough you're blame worthy
17 for doing. So, perhaps someone is
18 blameworthy but it doesn't show that
19 it's wrong.

20 And again here the numbers matter,
21 right? If in fact take the case of
22 statutory rape. So we're talking about
23 teenagers here rather than children
24 here. The number of males who report
25 sort of a positive relation is

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2 extraordinarily high and even the notion
3 of women who report are really high. So
4 yeah, I guess even on a risk analysis
5 it's not obviously that risky.

6 So for example, for teenagers,
7 roughly 50% of teenagers who are 16 or
8 younger in the US have had sex. So
9 yeah, it just doesn't seem that big a
10 risk, at least for teenagers. So I
11 guess I think, look, the risk is not a
12 wrong maker. It does go towards
13 blameworthiness. Maybe people are
14 blameworthy. That's not obvious to me.
15 And also even if they are blameworthy,
16 it goes to what they're thinking. Blame
17 to me is an internalist feature. So we
18 have to look inside the person's head.
19 It just might not be the case that these
20 people have blameworthy mental states.
21 Maybe they -- maybe they should have
22 thought of this. But that doesn't make
23 you blameworthy.

24 JASON WERBELOFF: I like that
25 response because it's bold and I like it

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2 because it kind of denies probabilistic
3 utilitarianism, right? So it says,
4 well, if you're going to be a
5 utilitarian you've got to evaluate the
6 rightness or the wrongness of your
7 action on the actual consequences of
8 that action, not on the probabilities of
9 negative consequences or positive
10 consequences resulting.

11 I'm a probabilistic utilitarian
12 for various reasons like this that push
13 me that way. But if I've gotten you to
14 a point where you say, well, the only
15 way I can justify my position is by
16 denying that type of utilitarianism,
17 then we reach an impasse. But I say,
18 well that's a stalemate and it's a
19 stalemate I'm willing to live with
20 because it makes your position a little
21 bit less plausible, right, that you have
22 to push that way.

23 The second point I want to make is
24 even if it is the case that 74% of male
25 teenagers who engage in sex with an

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2 adult report a positive experience, even
3 if you might say from that data that
4 there's a low probability that they'll
5 have a negative experience, and I agree
6 with that. But the question is those
7 other 26%, perhaps some of those had a
8 horrendous experience. So it wasn't
9 just little bad, it could have been
10 very, very, very, very bad. And even
11 though there's only a low probability of
12 that very bad thing happening say 24%,
13 it might be enough to justify saying,
14 well, hold on, that isn't something that
15 I should do.

16 STEPHEN KERSHNAR: Okay. So an
17 excellent point. I'm highly
18 sympathetic. Let me address
19 probabilistic utilitarianism. So I am
20 not a fan of probabilistic
21 utilitarianism and here's my argument.
22 Generally we say things like pleasure is
23 good or well being is intrinsically
24 good. And the sort of consequentialism
25 then says, look, the right is a function

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2 of and only of the good.

3 I think if you go to probabilistic
4 utilitarianism you have to sever one of
5 those two claims. I think that's a huge
6 price to pay. It's not as huge as it is
7 for ruling utilitarianism, but it is
8 quite huge. So that's one reason to
9 reject it. A second issue is the
10 framing of the probabilities. You have
11 to say, okay, is the probabilities for
12 Alice in the situation, for 13 year old
13 girls in the situation, for girls ages 7
14 to 16. And there's no way to set the
15 reference class by which to make it
16 correct or incorrect. So second is the
17 issue of setting the reference class.

18 The third issue is a variant of
19 Derek Harvard's Egyptology. For looking
20 at the reference class with the
21 probabilities then how well the sex went
22 in ancient Egypt affects whether or not
23 Jones can have sex with a 13 year old
24 girl today. Strikes me highly
25 implausible that whether or not Jones

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2 should have sex with this girl today
3 depends on facts of ancient Egypt.

4 So three quick objections
5 probabilistic it severs the notion being
6 the right and the good, the reference
7 class problems are severe and introduces
8 Egyptology.

9 But let's say I'm wrong about all
10 that. Let's say that -- do we think
11 this about other issues? We say, look,
12 before I have my son get bar mitzvah
13 or engaged in -- join wrestling, I
14 really have to decide, is this really
15 the best thing for him as compared to
16 other activities? Just in common sense
17 terms? I don't think we approach it
18 like this. So if we're using intuitions
19 rather than being strict
20 consequentialists, I think, look, do we
21 really do this calculation? Do we
22 really say absolutely the best use of
23 his time is preparing for his bar
24 mitzvah rather than, for example,
25 studying extra math classes?

1 Sexual Taboos Stephen Kershner

2 So yeah, I guess I just don't
3 think we approach it in those common
4 sense terms. There's no escaping this.
5 If you're a probabilistic utilitarianism
6 and the risk here is huge, I don't think
7 that we know that the risk is huge in
8 the way in which you're putting. The
9 risk, I think, is with regard to
10 unwilling sex with underage individuals
11 like out and out rape. And I agree with
12 you, that's horrendous. That's a
13 terrible thing to do. It's severe wrong
14 and should be severely punished. But
15 you're saying sort of willing sex that
16 people didn't enjoy that that has a risk
17 of severe harm. I don't think we know
18 that empirically. In fact, we don't
19 know that empirically. But again, we
20 would depend on the actual what do the
21 studies show and what can be best
22 determined.

23 JASON WERBELOFF: I think it's a
24 good answer and yeah, I still stick with
25 my probabilistic utilitarianism, but I

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2 find it very interesting that if you
3 remove probabilistic utilitarianism, you
4 would find it very hard to defend the
5 view that adult child sex is in
6 principle wrong.

7 STEPHEN KERSHNAR: Right. If
8 we're in the area of legislation rather
9 than morality, here's a rule of thumb:
10 If you don't know whether something has
11 expected good or expected bad
12 consequences, the thumb on the scale
13 should go to liberty. So if we don't
14 know whether willing sex with 15 year
15 olds is going to have net good or bad
16 consequences, it's like, say, oh well,
17 go ahead and ban it. The idea is that
18 people trying to criminalize something
19 bear the burden and even having harsh
20 opinions on this. Before we condemn
21 people for engaging these on the basis
22 of probabilistic utilitarianism, we
23 should know that it does pose a risk for
24 those and only those willing
25 participants. I don't think we know

1 Sexual Taboos Stephen Kershner
2 that.

3 MARK OPPENHEIMER: I think also to
4 not let Jason off the hook, esotericism
5 by nature is always going to be
6 contingent on the particular facts that
7 you find yourself in, and the
8 probabilities are going to be contingent
9 on that particular place. So you can
10 imagine if you're in a highly neurotic
11 society where anyone who, let's say,
12 engaged in willing sex below a certain
13 age, there's a high likelihood that
14 they're going to go see their analyst.
15 And the analyst is going to say you
16 think you're consented to this, but you
17 are wrong and deluded and the worst
18 possible thing ever happened to you.
19 And you need to be in therapy for the
20 next 40 years going through this deep
21 trauma. That's the kind of society you
22 live in. Well, I expect the probability
23 that this was a bad thing to have
24 happened. If you live in, like, a
25 hippie commune where people are having

1 Sexual Taboos Stephen Kershner
2 sex at a young age all the time, and
3 everyone says, a celebration of our
4 body, and there's no neuroscience
5 whatsoever, and no one in that society
6 has ever felt any kind of trauma about
7 having sex under the age of 18, well,
8 then there are probabilities, right?
9 And so Jason can't, in principle, rule
10 it out. It's going to very much depend
11 on the facts of the case.

12 I suppose people that are going to
13 have an in-principle objection are going
14 to have to look at things beyond
15 consequences. So they're going to have
16 to say it's wrong in and of itself. And
17 maybe one of those kinds of cases to
18 say, well, you have this obligation to
19 yourself to not do that to your body,
20 that it's somehow sacred, and that if
21 you willingly engage in this, you are a
22 co-wrongdoer as the child, and the other
23 person has exploited you because you
24 couldn't have freely given your consent
25 or something like that, and they've used

1 Sexual Taboos Stephen Kershnar
2 you as a means only. And regardless of
3 the consequences, the thing is wrong in
4 and of itself.

5 Again, you might have to start
6 biting other bullets. So in our
7 discussion with Raja Hawani, he thinks
8 that all sex is using someone as a means
9 only. It's being driven by passion.
10 It's by seeing them as this body that
11 you want to take advantage of for
12 pleasure. And maybe it's not so simple
13 when you want to draw these lines.

14 STEPHEN KERSHNAR: So I think it's
15 three excellent points. So let me
16 address them per points. So one is,
17 yeah, I think framing issues and
18 societal attitudes are both relevant and
19 in place here. I suspect that being gay
20 in parts of the Middle East is very
21 different than being gay in Ithaca, New
22 York. So that's going to have -- bound
23 to have some impact on the way in which
24 people looked at it, and particularly
25 whether at the end of the day, they see

1 Sexual Taboos Stephen Kershner
2 it as harmful and perhaps even whether
3 it is harmful based on the disapproval
4 of family, friends, peers and so on.

5 As far as the notion that sex
6 wrongs yourself, again, I think this is
7 to misidentify the wrong maker. Even if
8 you had claims against yourself, I'm not
9 sure that you do, it's not clear why you
10 can't waive them. We waive rights in
11 general. We waive rights all the time.
12 You allow people to touch you, you allow
13 your spouse to touch you. You allow
14 your judo partners to touch you. Why
15 can't you waive rights? We do this
16 standardly. If you can waive rights
17 against others, why can't you waive
18 rights against yourself?

19 As far as the notion that sex --
20 not directly relevant here, but that sex
21 always uses someone merely as a means, I
22 guess I don't think that's right. I
23 think that sort of not a correct account
24 of Kant. What I think Kant would say
25 is, well, you treat someone as an end

1 Sexual Taboos Stephen Kershnar
2 when you treat someone as a free and
3 rational being, and you treat someone as
4 a free and rational being when you
5 respect that individual's rights.

6 So again, since you've waived the
7 relevant rights, it's hard to see why
8 you haven't respected that person as a
9 free and rational being, and as such,
10 you've treated that person as an end.
11 Now, I know there's a lot of Kantian
12 theories, you typically see this in the
13 philosophy of sport, where people say,
14 well, treating someone's end is not
15 solely a function of rights. You say,
16 okay, well, what is the additional
17 determinant? And that actually gives us
18 some sort of criterion rather than some
19 vague appeal to degradation or
20 exploitation or objectification. Again,
21 I don't see it. And even if there were
22 such a claim based on degradation or
23 exploitation or objectification or
24 something along the lines, it's not
25 clear that I can't waive it.

1 Sexual Taboos Stephen Kershner

2 It's an odd view that you have
3 claims that you don't own, and it's a
4 particularly odd view if you're
5 emphasizing the notion that people are
6 free and rational beings, that they
7 don't own their own claims. So I think,
8 one, in sex, we treat someone as an end
9 all the time, at least you've got the
10 full consent. But two, yeah, I think
11 it's just a misunderstanding to say that
12 you treat someone merely as a means.
13 And again, Roger is great, I benefit
14 enormous amount from his work. But on
15 this one, I disagree.

16 JASON WERBELOFF: So there is, and
17 you've mentioned this, an enormous
18 antipathy towards pedophiles and towards
19 pedophilia. So there's just an
20 incredibly strong gut reaction.

21 Now, on the one hand, we might try
22 to explain that by citing the wrong
23 maker of the action, right? So you've
24 done a very good job of explaining how
25 deontology specifically rights and

1 Sexual Taboos Stephen Kershner
2 consent and using people as a means to
3 an end. Those issues aren't clear wrong
4 makers in pedophilia, and then we
5 discuss utilitarianism and consequences.
6 But there's a third route that people
7 could take, which is to say, well, the
8 pedophile is vicious, they have a poor
9 character. So even if everything goes
10 well, so even if the twelve year old has
11 a good time and doesn't report
12 negatively about the experience, and
13 even if you want to keep probabilities
14 in the mix and say, well, there's a high
15 probability that will go well, and even
16 if there's no rights that are set aside,
17 and even if consent isn't an issue here
18 and there is willingness, there's still
19 a viciousness on the part of the
20 pedophile. Viciousness meaning that
21 there is a vice that they're enacting
22 through the act. So how would one
23 respond to that? And as a corollary
24 question, it seems like part of the
25 issue that people have with pedophilia

1 Sexual Taboos Stephen Kershner
2 is not just the act, but even the
3 imagination, even the thought of it.
4 And that points at the viciousness
5 issue, right? So it points at this idea
6 that if someone even just has the
7 thought of it, that is morally
8 abominable because there's something
9 wrong with their character, even if it
10 never eventuates in an act.

11 STEPHEN KERSHNER: Superb. Yeah,
12 so I think this gets at exactly how a
13 lot of people think of it. They think,
14 look, I just find this disgusting. I
15 don't know why I find disgusting or what
16 I mean by it being disgusting, but it's
17 just disgusting. And then they say,
18 look, there's something really wrong
19 with you if you're having these
20 fantasies or if you're watching cartoon
21 adult child pornography. Like that is
22 also outrageous. Although why it's
23 outrageous, you're right, it's probably
24 going to be vice. So a couple of things
25 to say here. One, even if it were

1 Sexual Taboos Stephen Kershner
2 vicious, being vicious is not itself a
3 wrong maker. And when we do the right
4 thing for the wrong reason and a wrong
5 thing for the right reason, so it really
6 doesn't affect whether or not the acts
7 are right or wrong. I'm not sure
8 viciousness is a major component of the
9 good and the bad. So even if it was
10 vicious, it's not clear that even is
11 enough to make it bad. It's got to
12 compete against pleasure. And so which
13 one wins out is not obvious to me. But
14 let's take on the directly. Let's
15 consider directly a notation that it's
16 vicious. I just don't think it's
17 vicious, and here's why.

18 So here's what I take vice to be.
19 I take vice to be a property of an
20 attitude. So I'm using Thomas Hark's
21 account here. And so involves either
22 loving evil or hating the good, or
23 involves an appropriately aligned
24 attitude like loving the good or hating
25 evil. But that's so disproportionate in

1 Sexual Taboos Stephen Kershner
2 its intensity that it becomes a vice.
3 Let's take the former case that vice
4 includes loving evil or hating the good.
5 Well, it doesn't really involve hatred
6 when you're watching these things. So
7 it involved would involve loving evil.

8 Okay. So does it involve loving
9 evil? Well, there's two ways we can
10 look at this. It could be that you're
11 vicious if you love something that's
12 absolutely evil. So it's got to
13 correspond in a certain way with the
14 world. Or the way I prefer it, which is
15 that you love evil in the sense that you
16 believe it to be evil. So that's an
17 internalist account of vice, since I
18 think virtue and vice are purely
19 internalist, think the internalism is
20 the way to go. But let's look, the
21 externalist account for having a sexual
22 fantasy or desiring prepubescent
23 children or young teens is wrong because
24 your desire is directed at something
25 which is evil.

1 Sexual Taboos Stephen Kershner

2 Well, that just begs the question,
3 right? We have to know what makes it
4 evil, right? You still need to
5 establish that's evil to show that your
6 desire directing toward it is directed
7 towards an evil. So I don't think we've
8 gotten very far. In addition, I'm
9 highly skeptical of these externalist
10 accounts of vice, right? Because,
11 again, they make it depend on something
12 outside your head. But let's take
13 clearly what's inside of your head. So
14 imagine that are you desiring something
15 that you believe to be evil or bad? I
16 guess, I don't think people have that
17 course, a desire. I think it's more
18 fine grained. Were this to occur, it
19 would be sexy. Not that it's good that
20 it would occur, but were it to occur.
21 So, for example, on some accounts, over
22 half of women have forced sex fantasies.
23 There's at least some reason to believe
24 these are rape fantasies. So some
25 enormous percentage of women, probably

1 Sexual Taboos Stephen Kershner
2 over half, have rape fantasies. Do they
3 really think it would be good if they or
4 someone else were raped? Absolutely
5 not. They have fine grained fantasies.
6 They say, were this to occur, it would
7 be sexy. It would not be, all things
8 considered, good. It'd be atrocious.
9 But there would be a sexiness to it.
10 And this is true. We watch all sorts of
11 violent movies that we think are
12 excellent.

13 I'll just give a few examples,
14 right? We watch Shane. We're glad to
15 see the bad guy cut down. We watch Full
16 Metal Jacket. We like the artistry of
17 that. We watch the brutality of the
18 Deer Hunter. We say, well, that's a
19 fascinating movie; I'm glad I watched
20 that. Even though I watched all sorts
21 of horrendous violence and cruelty. So
22 I think we have very fine grained
23 attitudes towards scenarios. One of
24 those fine grained attitudes is that
25 that scenario is sexy. So I would claim

1 Sexual Taboos Stephen Kershner
2 that it's not vicious. And again, you
3 could see it on the two interpretations
4 of what it means to be vicious.

5 MARK OPPENHEIMER: So I'd like to
6 pause a bit on this realm of fantasy
7 where people kind of conjure up an
8 image, but they never act on it and
9 whether that could be wrong. So you can
10 imagine the abstract case where someone
11 imagines raping -- raping an abstract
12 person. And then there's a case where
13 they imagine raping a very particular
14 person. So they imagine raping your
15 mother. And your mother has a very
16 strongly held interest in being well
17 regarded. She would be horrified to
18 know that someone is imagining raping
19 her, but she never finds out. So in
20 other words, she holds an interest.
21 She's unaware of the interest being set
22 aside, but it is in fact, being set
23 aside through the fantasy process. If
24 she had a pick between worlds where
25 everybody treated her well and regarded

1 Sexual Taboos Stephen Kershner
2 her well versus a world where everyone
3 treated her well and regarded her
4 poorly, she's going to pick the first
5 world. She thinks that, in other words,
6 the way people think of you matters some
7 way. Unclear how much on the scales,
8 but I think most people have that kind
9 of an interest. So is it wrong then, to
10 have these kinds of violent sexual
11 fantasies about particular individuals
12 if you think that they would be
13 horrified that you had the fantasy?

14 STEPHEN KERSHNER: So no, and let
15 me handle it in two different ways. One
16 is, do you have an interest in whether
17 or not a person thinks? I think the
18 answer to that is no. If I have a claim
19 against what someone -- what Mark thinks
20 about me, then Mark owes me a duty with
21 regard to what he does with his body or
22 his labor. But if he owes me a duty if
23 I have a claim against Mark with regard
24 to his body or labor, it seems that in
25 some sense I own his body or labor, but

1 Sexual Taboos Stephen Kershnar

2 I don't. So if it were to be the case
3 that someone would have a right not to
4 have the person think about them, it
5 would seem that the thinker would in
6 some sense own the person's body or
7 labor. So that's why I don't think
8 there's that wrong maker present.

9 But let's leave that aside. Let's
10 assume the issue is, does a person have
11 an interest in this? It's a little hard
12 to see how they have an interest in
13 this. So let's go to kind of the
14 standard accounts of interest. I think
15 the best accounts.

16 Does it set back Alice's pleasure?
17 Well, she doesn't know about it doesn't
18 set back a pleasure.

19 Does it set back one of her
20 objective list goods? Doesn't set back
21 her autonomy, the amount of love in her
22 life, her virtue or knowledge, things
23 like that.

24 Okay. So it doesn't set -- I
25 think, the primary determinants actually

1 Sexual Taboos Stephen Kershner
2 it's only pleasure, but it might maybe
3 it's two of those. It does set back her
4 desire fulfillment theory. But I think
5 desire fulfillment theory is clearly
6 false. And you can see this in a couple
7 of ways. It's very hard to see how the
8 mere fulfillment of your desire,
9 independent of you knowing about it,
10 makes your life go better or better or
11 worse.

12 Second, this paradox case is what
13 happens if I desire my life go poorly.
14 I don't think desire for fulfillment can
15 answer that. And then there's the time
16 of the badness for me. If I desire
17 something ten years from now and it
18 happens, is it bad for me when the
19 desire occurs? When it happens, does it
20 backtrack? So I think desire
21 fulfillment theory is a particularly bad
22 theory of self interest. And because of
23 that, I just don't think it sets back an
24 interest of the person that's fantasized
25 about.

1 Sexual Taboos Stephen Kershner

2 JASON WERBELOFF: So we might want
3 to think about not just a particular
4 person that you have a desire for, or a
5 desire to harm. We might want to think
6 about a class of persons. So one
7 particularly thorny issue which has been
8 around for decades but which has
9 suddenly come to prominence is this idea
10 of having preferences for or against
11 certain racial groups. And enormous
12 political, academic, philosophical
13 discussion on this recently, and you've
14 written on this as well, on a preference
15 towards, for example, Asians. And that
16 is seen by some as morally repugnant to
17 fetishize a certain racial group,
18 they'll say. Here, I'm not sure exactly
19 what the reason is that they would say
20 it's morally abominable. I'm guessing
21 it's that they would say it's vicious.
22 And so some of your responses will
23 pertain here as well. But how do you
24 grapple with that?

25 STEPHEN KERSHNER: So I'm glad you

1 Sexual Taboos Stephen Kershner
2 mentioned it. Actually it's quite an
3 important debate. It's only recently
4 got a lot of attention, particularly in
5 the context of racial, ethnic, sexual
6 preferences, I should say put the
7 preference more generally. So take
8 Asian romantic preference. Here are the
9 preferences either for sex, dating or
10 marriage. So it need not be sexual and
11 also can be intra or intergroup and it
12 can be intrinsic or extrinsic.

13 So for example, it could be that
14 young Korean men prefer young Korean
15 women, okay? So that's intragroup.
16 There people's intuitions seem to
17 disappear and you think, okay, so young
18 Jewish men in Israel have a real taste
19 for young Jewish women. Okay. Well,
20 people don't seem to get that upset with
21 that. Same thing with regard to
22 intragroup. And then the preferences
23 might be extrinsic, right? It might be
24 that the Korean man thinks, look, it's
25 going to keep my sister, my mom and my

1 Sexual Taboos Stephen Kershner
2 grandmother happy if I'm dating a Korean
3 woman. So I prefer a Korean woman to
4 keep everyone off my back. But let's
5 have the kind of fetishist account that
6 people find most offensive, right?
7 White men desiring Asian women, east
8 Asian women more particularly, okay?
9 And I should note that these preferences
10 apparently are all over the place.
11 They're not only those and apparently
12 I've been told that they're quite strong
13 preferences in the gay community. And
14 so these things are not linked to sort
15 of white men going after East Asian
16 women. I should also mention that the
17 studies here are not clear, but there's
18 at least one study which suggests that
19 white men don't have this preference.
20 It's actually East Asian women's
21 indifference between white men and East
22 Asian men that's producing these
23 effects.
24 But again, let's assume that this
25 fetish is there and it's strong, right?

1 Sexual Taboos Stephen Kershner

2 In the Ivy League, it certainly seemed
3 to be a very common pattern to see, for
4 example, Jewish men with East Asian
5 women. Again, it's hard to see what the
6 wrong maker is for the reasons I
7 mentioned earlier. It's hard to see
8 whose right is infringed.

9 Okay, but that's straight.

10 Imagine no, but it's degrading or it's
11 exploitative, it's oppressive, it hurts
12 someone's dignity. But it's a little
13 hard to see why that's more true here
14 than in general. Imagine that
15 heterosexual men show a real preference
16 for women with thin, tight bodies, perky
17 breasts, pretty faces, things like that.
18 Is that more dignified or less
19 degrading, or you had to articulate it
20 publicly. None of it sounds
21 particularly good. So given that people
22 have these preferences and the
23 preferences don't themselves seem
24 justified or unjustified, right. Why?
25 What would justify a heterosexual rather

1 Sexual Taboos Stephen Kershner
2 than a homosexual preference? Or what
3 would justify a preference for a thin
4 type runner female runner bodies rather
5 than curvy Marilyn Monroe bodies? It's
6 hard to see what would justify in these
7 preferences.

8 So there just doesn't seem to be a
9 wrong maker here. Or if it is, it's not
10 distinctive to Asian romantic
11 preference. But let's consider
12 consequentialism, because Jason's a
13 consequentialist, and I'm highly
14 sympathetic to consequentialism. It's a
15 real notion -- it's a really bizarre
16 notion this harms East Asian women.
17 Here's an analogy. Imagine in the Ivy
18 League, the women have something that --
19 I made this up -- Hebrew fever, right?
20 And they really find Jewish men sexy,
21 right? Particularly Ivy League Jewish
22 men. Now, if you ask Jewish men if we
23 could get rid of this preference or this
24 desire among Ivy League undergraduate
25 women, would you want this -- would you

1 Sexual Taboos Stephen Kershner
2 want to be getting rid of they'd be
3 like, Absolutely not. Are you kidding?
4 I want to ratchet it up and be more
5 intense. Right. Because it gives you a
6 competitive advantage.

7 So you think, okay, well, then are
8 East Asian women irrational? They don't
9 like the strong dating advantage of
10 being fetishized? I very much doubt it,
11 right. If you said, okay, now you're
12 going to have the competitiveness of
13 women who are found unattractive for
14 various reasons, they think, well, no,
15 thank you. I think I'll go back to the
16 attractiveness category.

17 It might, in fact, be sort of
18 harmful to some non East Asian women,
19 that is their competitors. That might
20 be the person who is harmed on a general
21 or particularly our worry on a
22 consequential scale. And there we have
23 to okay, how do we balance out the harms
24 versus the benefits? But at least we're
25 being honest that we have to do a cost

1 Sexual Taboos Stephen Kershner
2 benefit analysis.

3 So there's no wrong maker on a
4 consequentialist, at least no obvious
5 one. And in fact, I don't think it
6 harms East Asian women, I think it
7 probably benefits them. And for the
8 same reason, it's not bad. It has none
9 of the distinguishing features of an
10 intrinsically bad attitude. It's not
11 false when you say, I find this type of
12 woman attractive. That's a true
13 statement of fact. You do. It doesn't
14 involve some sort of lack of dessert
15 satisfaction. So I think you're right.
16 It probably has to break down to vice.

17 So what would be the vice here?
18 Is this a case of loving something
19 that's evil or hating something that's
20 good? Well, it doesn't involve hatred,
21 so it's got to be loving something
22 that's evil. It's hard to see what's
23 evil about it. And even if it were like
24 if you had some objective, it's hard to
25 see what's different than this other

1 Sexual Taboos Stephen Kershner
2 than liking thin women who have thin
3 runner like bodies.

4 So the reason I think this matters
5 is not just because you have this real
6 disconnect between everyday people who
7 think there's nothing wrong with this
8 and academics who get bent out of shape
9 finds incredibly offensive, what they
10 explain as disconnect.

11 But there are two implications of
12 these racial and sexual preferences.
13 One is it shows that discrimination is
14 not wrong. If it's okay discriminate in
15 the case of sex or dating a marriage,
16 it's a little hard to see why it's wrong
17 to discriminate in other areas such as
18 employment or friendship.

19 Second, this shows you a using
20 kind of a Robert Nozick approach, a
21 justice in transfer way that you get to
22 very unequal wealth or income in a way
23 which doesn't infringe on rights.
24 Marriage is a huge economic benefit for
25 a lot of people. Being attractive is

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2 something that people pay a lot of money
3 for. It's something they value quite
4 strongly. So if you were to convert
5 this into economic terms, people might
6 gain quite a benefit from being
7 fetishized. So what this shows is this
8 kind of strong argument for a perfectly
9 just way to get the very unequal
10 results.

11 JASON WERBELOFF: Maybe the
12 response is going to be something like
13 I, as an Asian woman, feel very hurt and
14 offended and that counts.

15 So in other words, it's not that I
16 don't have sexual partners available to
17 me. So it's not that kind of harm and
18 it's not the harm that I'm going to
19 suffer negative consequences in my life
20 other than my emotional hurt. Maybe
21 it's something like that.

22 STEPHEN KERSHNER: Yeah, you might
23 think that the world of dating is
24 bouncing off emotional hurts, right? If
25 people want you for the wrong reasons,

1 Sexual Taboos Stephen Kershner
2 that hurtful. It's hurtful. If they
3 don't want you at all, that's even more
4 hurtful. You want to get that sweet
5 balance so they want you for and only
6 for the right reasons. Well, being a
7 heterosexual male and talking to
8 heterosexual males, I could say that
9 males plenty of times, especially even
10 with their wives when they were first
11 dating, did not want them for the purest
12 of reasons. So we're not in the land of
13 like, virtuous desires here. Nor is it
14 clear to me that emotional hurt is
15 relevant here. You may be emotionally
16 hurt by other people's attitudes, but
17 that seems to be a statement about your
18 psychology, not about any sort of moral
19 feature. Take women who are
20 discrimination against the obese is
21 quite strong in our society in all sorts
22 of levels. We can track it economically
23 in terms of dating a marriage. We can
24 track it in terms of economics, career
25 advancement, things like that. And we

1 Sexual Taboos Stephen Kershner
2 can track in terms of attitudes like the
3 halo effect.

4 So you can imagine an obese woman
5 being very offended about her social
6 invisibility, and I kind of sympathize
7 with her, but it's hard to know what to
8 do with that. Yeah, it's kind of sad
9 that she's emotionally hurt, that she's
10 socially invisible and that people don't
11 desire her and they don't ask her out,
12 and that they don't discuss her in
13 filthy ways in between, like wrestling
14 practice.

15 It's hard to see what to make of
16 that. Okay, that happens. It's
17 unfortunate. So what.

18 As far as Asian women saying
19 they're emotionally hurt, I'm just
20 highly skeptical of this claim in that
21 if you said, okay, look, imagine God
22 came down and said, I'll tell you what,
23 tell you what, East Asian Women, you
24 secretly vote on this, and I'll
25 eliminate any preference that white men

1 Sexual Taboos Stephen Kershner
2 have for you. And actually, I'm not
3 even sure it's confined to white men,
4 but we'll eliminate any preference,
5 right? Any ordering that you have. Is
6 that what you want? I suspect I say,
7 Well, I'm hurt, but not that hurt. And
8 by analogy, if you asked Jewish men in
9 the Ivy League if God said the same
10 thing, would you like me to get rid of
11 Hebrew Fever? They'd say, Well, I'm not
12 that hurt. Let's keep the competitive
13 advantage going strong.

14 So I guess two things. One, I'm
15 not sure what to make of the emotional
16 hurt. And two, that emotional hurt
17 strikes me as irrational.

18 MARK OPPENHEIMER: So it seems
19 like the complaint could be to say
20 you're treating me as a token for a
21 type. So imagine you're lying in bed
22 with your spouse and you're sort of
23 whispering I love you to each other.
24 And she says to you, Why do you love me?
25 And you say, Well, it's because you're

1 Sexual Taboos Stephen Kershner
2 Asian. She says, but is it not because
3 of the way I look after the kids and
4 I've got all these other wonderful
5 attributes that are unique to me?
6 You're like, no, pretty much any other
7 Asian woman could do. The thing that I
8 only care about is the fact that you're
9 from Southeast Asia and you're an Asian.
10 And if some other woman popped into bed
11 who met their criteria, that would be
12 great for me and I would love them. All
13 the other underlying stuff I don't care
14 about at all. You might think that she
15 then feel like, well, there's something
16 dishonest in the nature of this
17 relationship. I want to be valued not
18 for this arbitrary attribute of where I
19 was born, but for these other things
20 that matter. I agree that you might
21 have a weighting of preferences. In
22 other words, if someone is to pick
23 between a life of solitude or a life of
24 being fetishized, maybe they pick being
25 fetishized, but they might still think

1 Sexual Taboos Stephen Kershner

2 that they're worse off.

3 STEPHEN KERSHNER: This is just
4 not kind of an accurate account of
5 people's psychology, man. Take people
6 who've been married for a long time,
7 happily married, and you say, okay.
8 When you were a 21 year old and walking
9 around the cold and snowy campus of
10 Cornell and you met this Jewish woman,
11 was your goal was it to explore her
12 intellect? Or was it your goal to take
13 her to bed immediately and as thoroughly
14 as you could? And you might think,
15 well, these relationships start out
16 sexual, not all them, but some of them
17 do. It's hard to get around that. And
18 so, yeah, I think it would be really
19 unfortunate if your partner in life
20 thought you as a replaceable cog. But I
21 don't think that's an accurate
22 psychology of what's going on here.

23 By analogy with Hebrew fever, it's
24 not like that would be the only
25 consideration that the Ivy League women

1 Sexual Taboos Stephen Kershner
2 would have, but it would be a
3 consideration. And I think that's
4 what's going on there. It's actually
5 even stronger, I think, some of the
6 Asian fetishizing, my guess is -- this is
7 just a guess, I don't have any data
8 support of this, but that's not actually
9 solely based on sexuality. It's also
10 based on something they're having better
11 values than others, being more
12 academically oriented than others, being
13 more family oriented than others. I
14 don't know if any of these things are
15 true. Lots of our stereotypes are sort
16 of inaccurate or even if they're
17 accurate. There's plenty of exceptions
18 both ways. But it's not even clear to
19 me that these stereotypes of fetishizing
20 is purely sexual.

21 So I just don't think this track
22 sort of has any sort of relation to the
23 real world psychology of people
24 considering sex, dating, and marriage.
25 But there's a more theoretical issue

1 Sexual Taboos Stephen Kershner
2 here which is separate from this, which
3 is to what degree do you love the person
4 as opposed to the properties the person
5 has? That is, would you love your
6 wife's doppelganger as much as her?
7 Well, most of us say, well, no, we would
8 not. You love your wife. You would not
9 love your wife's doppelganger. And that
10 is an intrinsic self for self. And you
11 think, okay, well, what would justify
12 your loving A rather than B? It's very
13 hard to fill that out in terms of
14 theories of love. Some people say
15 something like, well, it's your shared
16 history, but of course you can get
17 hypotheticals, which sort of equalize
18 the shared history. So you'll have as
19 much shared history with a doppelganger
20 as your current wife, so that will even
21 out. So it's kind of a theoretical
22 issue. Do you love the person or do you
23 love the collection of properties of the
24 person bears? And if it's the latter,
25 what's wrong with duplicate replacement?

1 Sexual Taboos Stephen Kershnar
2 There's a deep problem in love theory,
3 but it's not a problem with East Asian
4 fetishizing, our preferences for that.

5 So, yeah, I find this one of these
6 issues that there's just nothing there.
7 There's no there. There's no wrong
8 maker. There's no bad maker. There's
9 no vice maker. And yet people get
10 really upset over it. And it also
11 strong implications for both
12 discrimination and inequality.

13 JASON WERBELOFF: I find this
14 discussion fascinating because exactly
15 this contrast between such strong
16 intuitions, such deep seated emotional
17 responses to these issues. But when you
18 probe, it's really not clear what the
19 wrong maker is. And so it seems strange
20 to have such strong emotional responses
21 to such intellectually unclear
22 positions. Perhaps one way of looking
23 at it is not that the strong emotional
24 response is linked to a false belief.
25 Perhaps one way of thinking about it is

1 Sexual Taboos Stephen Kershnar
2 that the strong emotional response is an
3 evolutionary response. So perhaps
4 certain activities today are okay, but
5 weren't in our evolutionary past. When
6 I say okay, I don't mean morally okay,
7 don't have the kind of negative
8 consequences that perhaps we thought
9 they would waive had in the past.

10 By the way, I share some of your
11 conclusions, but not other conclusions,
12 but I share most of your premises. So
13 it's very interesting to me to play this
14 game in my own head of where my
15 intuition is coming from. But I like
16 this evolutionary explaining away of
17 intuitions generally in philosophy as an
18 approach.

19 STEPHEN KERSHNAR: So I think
20 that's an excellent point and I actually
21 think what's going on we look at this is
22 kind of a study of speed dating where
23 sort of women have in group preferences.
24 Men didn't seem to, but the women seem
25 to have in group preferences. And you

1 Sexual Taboos Stephen Kershner
2 could imagine why that is, right? Sort
3 of an intact marriage and intact
4 community probably is better off in
5 terms of providing the resources. And
6 we can tell these sort of evolutionary
7 stories that explain these preferences.
8 One of the problems with these
9 explanations is it doesn't get it, I
10 think a lot of the outrage that we see
11 today.

12 So I'll just give you a few
13 examples. People are pretty outraged at
14 the notion that people would be
15 attracted to teenage girls, teenage
16 women.

17 In evolutionary terms, that makes
18 no sense. In evolutionary terms, that's
19 precisely who you want to be attracted
20 to because they have high degree of
21 fertility, many more years of fertility.
22 So it only explains that outrage.
23 People are outraged when you're opposed
24 to affirmative action. It's a little
25 hard to see why that would be

1 Sexual Taboos Stephen Kershner
2 evolutionarily valuable because what
3 you're doing is you're benefiting
4 individuals to affirmative action that
5 are genetically distant from the people
6 who are providing the benefits, or at
7 least a good deal of the people who are
8 providing the benefits. And even in
9 terms of the fetishizing of East Asian
10 women, it's hard to see what the
11 evolutionary explanation there is as a
12 woman, or as a man for that matter. The
13 great of the great to which you're
14 desired, the more likely that you're
15 going to reproduce and the more likely
16 that you can get a better partner. The
17 more demand there is for your supply,
18 the better the price you're going to
19 get.

20 So in evolutionary terms, it's
21 hard to see why any of these things
22 would generate the sort of intuitions we
23 have. Either the attraction to
24 teenagers, affirmative action, Asian
25 romantic preference, pretty much any of

1 Sexual Taboos Stephen Kershner
2 the other things we've discussed.

3 JASON WERBELOFF: The thought came
4 to me when I was thinking about adult
5 child sex rather than teenagers.

6 STEPHEN KERSHNER: Sure.

7 JASON WERBELOFF: There isn't an
8 evolutionary advantage to having that
9 sexual contact. There might be an
10 evolutionary disadvantage. So maybe
11 that's where my thought was. But as you
12 start to apply to these other cases,
13 it's not as clear.

14 STEPHEN KERSHNER: Well, let me
15 address the evolution and adult child
16 sex. And again, I'm speculating here,
17 but it's not obvious to me there aren't
18 evolutionary advantages. And here's the
19 reasons to think there are evolutionary
20 advantages. One is when you test
21 college age males surprisingly number
22 surprising numbers, like over one fifth
23 show attraction to prepubescent
24 individuals. I assume that's mostly
25 girls. And that's true not only when

1 Sexual Taboos Stephen Kershner
2 you ask them, they self report it, which
3 people have got to be hasn't self
4 reported, but when you use the penile
5 responses, which are the kind of true
6 test. So it's fairly widespread among
7 young men, particularly young men in our
8 society. Second, you see in the hunter
9 gatherers, you see it in all sorts of
10 cultures that are quite different than
11 our own in places like New Guinea and
12 things like that, Melanesia. And third,
13 you see it historically right? It was
14 true in adult child sex true in ancient
15 Japan, ancient China, India, Egypt, even
16 Great Britain. And you see in our
17 closest cousins of bonobos. Bonobos are
18 the closest to us genetically.

19 So if you see this same preference
20 for adult child sex in young males
21 today, in hunter gatherer societies
22 today, in history, and our closest
23 genetic cousins, there's excellent
24 reason to believe -- not excellent, but
25 there is good reason to believe that

1 Sexual Taboos Stephen Kershner
2 there's actually a strong benefit to
3 adult child sex.

4 Now, what is that benefit? I'm
5 not entirely sure. It might be that
6 people getting acclimated to sexuality
7 or they're getting prepared for a long
8 term bond, or it might be something
9 else. It might be that you're bonding
10 families together. I don't know exactly
11 what the explanation is. But I would
12 claim that in evolutionary terms, as
13 best we can determine, it's more likely
14 than not there's a strong evolutionary
15 case for adult child sex and for the
16 attraction that brings it about.

17 MARK OPPENHEIMER: So I've got a
18 general question, which is assume that
19 you have consent and of the sufficient
20 level between people, are there any sex
21 acts that you think are wrong?

22 STEPHEN KERSHNER: No. And here's
23 why. The idea is that -- leaving aside
24 catastrophic consequential overrides if
25 having sexism causes vast amounts of

1 Sexual Taboos Stephen Kershnar
2 civil war, okay, that overrides the
3 deontological considerations. But the
4 idea is that if A acts wrongly, then A
5 wrongs B, right. So you wrong, you
6 wrong someone. If you wrong someone,
7 you fail to satisfy duty, you owe that
8 person. You fail to satisfy duty, owe
9 that person, you infringe on a claim of
10 that person. A right is just a claim.
11 So if you act wrong, then you've
12 infringed on someone's rights. So if
13 you haven't infringed on someone's
14 rights, there's no wrong act, again,
15 without the consequential override. So
16 no, I think -- and if you have valid
17 consent, there's no right infringement.

18 MARK OPPENHEIMER: So some people
19 have concerns about certain kinds of
20 sexual behavior because they think it's
21 deviant. So BDSM, scat play,
22 homosexuality, group sex, all these
23 things which where you've got consent
24 and you don't have a rights violation,
25 people nonetheless feel that something

1 Sexual Taboos Stephen Kershnar
2 immoral has occurred. Are they just
3 mistaken?

4 STEPHEN KERSHNAR: Yes. So I do
5 think it's deviant because I understand
6 deviant sex to be statistically
7 abnormal. It's hard to see -- again,
8 there's no right infringement. So if
9 there's no right infringement, it's hard
10 to see what's wrong about it.

11 Someone might think it's wrong
12 because you're harming yourself or
13 you're harming others. I don't think
14 that harm is a wrong maker in that we
15 wrong people all the time. You win out
16 in economic competitions, the loser is
17 harmed. You win Alice's hand in
18 marriage and Bob is heartbroken. You've
19 harmed Bob.

20 So I don't think harm is a wrong
21 maker, but it's not clear to me that
22 these things are even harmful. I don't
23 see that S&M sex or homosexual sex, or
24 group sex, or scat play. Again, I guess
25 it depends on part of the -- problem is

1 Sexual Taboos Stephen Kershner
2 the counterfactual, right? If
3 individuals were not engaging in this,
4 what else would they be doing? Would
5 they be engaging in sex with even in
6 more intense orgasms, would they be
7 reading Aristotle? So I guess it
8 depends on how the counterfactual works.
9 But I guess I think there's no right
10 infringement. So there's no wrong maker
11 there. And even though it's harmful, I
12 very much doubt that counterfactually,
13 they'd be doing something which would be
14 significantly benefiting them more if
15 they were not engaging in this. So I'm
16 skeptical about even the harm claim.

17 MARK OPPENHEIMER: I think if we
18 took those pleasures away from Jason,
19 it's not like they'd be doing more
20 philosophy. He'd probably just be
21 really grumpy and be a much worse
22 philosopher.

23 JASON WERBELOFF: I can attest to
24 that. Not all those pleasures, not all
25 pleasures I indulge in, but when I don't

1 Sexual Taboos Stephen Kershnar
2 indulge in the pleasures I need to
3 indulge in, I'm very grumpy and I can't
4 do good philosophy.

5 STEPHEN KERSHNAR: With what
6 pleasure itself counts? People say,
7 well, all right, so you got pleasure out
8 of that, but what did it do to elevate
9 your --

10 JASON WERBELOFF: No, I think it's
11 good in and of itself. I'm a hedonistic
12 utilitarian. I think that hedons count.

13 STEPHEN KERSHNAR: I 100% agree
14 with you. Yeah. So that's my view. In
15 fact, my view the other things count
16 because they lead to headons, but even
17 that weren't true still, pleasure counts
18 for quite a bit.

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1 Sexual Taboos Stephen Kershner

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : SS

5 COUNTY OF NEW YORK)

6

7 I, Marissa Mignano, a Notary
8 Public within and for the State of New York,
9 do hereby certify the within is a
10 a true and accurate transcription of the
11 audiotapes recorded.

12 I further certify that I am
13 not related to any of the parties to this
14 action by blood or marriage, and that I am
15 in no way interested in the outcome of this
16 matter.

17 IN WITNESS WHEREOF, I have
18 hereunto set my hand this 12TH day of MAY
19 2023.

20

21 Marissa Mignano

22 MARISSA MIGNANO

23

24

25

A			
able 6:3 abnormal 71:7 abominable 38:8 47:20 absolutely 28:22 40:12 42:4 52:3 abstract 43:10,11 academic 47:12 academically 61:12 academics 54:8 acclimated 69:6 account 17:4 34:23 39:21 40:17,21 49:5 60:4 accounts 17:12 41:10,21 45:14 45:15 accurate 60:4,21 61:17 74:10 act 3:15 11:18 21:3 37:22 38:2,10 43:8 70:11,14 action 23:6,11 25:7,8 36:23 65:24 66:4,24 74:14 activities 4:19 13:13 28:16 64:4 activity 10:20 11:16,22 13:19 16:12 18:8 acts 39:6 69:21 70:4 actual 25:7 29:20	addition 22:15,20 41:8 additional 35:16 address 26:18 33:16 67:15 adult 2:10,20 8:25 11:24 21:6,14 26:2 30:5 38:21 67:4,15 68:14 68:20 69:3,15 advancement 56:25 advantage 33:11 52:6,9 58:13 67:8 advantages 67:18,20 affect 39:6 affirmative 65:24 66:4,24 age 6:19 8:24 10:3 31:13 32:2,7 67:21 ages 27:13 aggravated 17:9,10 agree 8:4,8 12:11 18:23 26:5 29:11 59:20 73:13 ahead 30:17 Alice 27:12 Alice's 45:16 71:17 aligned 39:23 allow 9:25 34:12,12,13 America 5:11 American	6:15,17 7:19 amount 22:14 36:14 45:21 amounts 69:25 analogy 51:17 58:8 60:23 analysis 24:4 53:2 analyst 31:14,15 ancient 27:22 28:3 68:14,15 anecdotally 21:23 answer 29:24 44:18 46:15 antipathy 36:18 anyway 18:15 apparently 49:10,11 appeal 35:19 apply 67:12 approach 15:3 28:17 29:3 54:20 64:18 appropriately 39:23 arbitrary 59:18 arbitrators 5:16 area 30:8 areas 54:17 arguably 7:22 argue 3:7 11:17 argument 7:25 11:9 12:23	26:21 55:8 arguments 13:25 Aristotle 72:7 articulate 50:19 articulating 16:5 artistry 42:16 Asia 59:9 Asian 48:8 49:7,8,15,20,22 50:4 51:10,16 52:8 52:18 53:6 55:13 57:18,23 59:2,7,9 61:6 63:3 66:9,24 Asians 47:15 aside 5:20,22,24,25 37:16 43:22,23 45:9 69:23 asked 58:8 assume 16:19 45:10 49:24 67:24 69:18 assuming 2:23 atrocious 42:8 attention 7:5 48:4 attest 72:23 attitude 39:20,24 53:10 attitudes 33:18 42:23,24 56:16 57:2 attracted 65:15,19 attraction 66:23 67:23 69:16

attractive 53:12 54:25 attractiveness 52:16 attribute 59:18 attributes 59:5 AUDIO 1:7,8 audiotapes 74:11 autonomy 14:8 18:2,13,19,23 19:11 45:21 available 55:16	4:2 6:13 28:12,23 based 20:2,2 34:3 35:22 61:9,10 basis 30:21 bat 4:3,23 battery 17:9,10,19 BDSM 70:21 bear 30:19 bears 62:24 bed 11:4 58:21 59:10 60:13 begs 14:20,20 41:2 behavior 70:20 beings 36:6 belief 63:24 believe 9:11 40:16 41:15,23 68:24,25 Benatar 10:5 15:8 Benatar's 12:9 15:2 benefit 36:13 53:2 54:24 55:6 69:2,4 benefiting 66:3 72:14 benefits 52:24 53:7 66:6,8 bent 54:8 best 17:12 28:15,22 29:21 45:15 69:13	better 23:8 46:10,10 61:10 65:4 66:16,18 beyond 9:17 32:14 big 24:9 Bill 19:21 bit 25:21 43:6 73:18 bite 15:7 biting 33:6 bizarre 51:15 bizarro 7:7 blame 23:16 24:16 blameworthiness 23:13 24:13 blameworthy 23:14,18 24:14,15,20 24:23 blanket 9:17 10:3 22:19 blood 74:14 Bob 71:18,19 bodies 50:16 51:4,5 54:3 body 17:22 32:4,19 33:10 44:21,24,25 45:6 bold 24:25 bond 69:8 bonding 69:9 bonobos 68:17,17 born	59:19 bouncing 55:24 bound 33:22 boys 9:6 Brain 1:9 2:3 break 53:16 breasts 50:17 bride 19:21 brings 69:16 Britain 68:16 Bruce 21:12 brush 11:3 brutality 42:17 bullets 15:8 33:6 burden 30:19 burglary 17:11,11,20
<hr/>			
B			
B 62:12 70:5 baby 9:6 11:15 back 14:2 17:23,24 45:16 45:18,19,20 46:3,23 49:4 52:15 backtrack 46:20 bad 13:24 14:4,10,11,23 15:25 16:2 19:20 21:3 26:9,10,12 30:11,15 31:23 39:9 39:11 41:15 42:15 46:18,21 53:8,10 63:8 badness 46:16 balance 22:21 52:23 56:5 ballet 6:4 ban 22:20 30:17 bar			
<hr/>			
C			
C 74:2,2 calculation 28:21 calm 9:6 campus 60:9 capture 5:18 care 59:8,13 career			

56:24	children	college	conjure
cartoon	3:21 4:19 6:2,9,14	67:21	43:7
38:20	11:2 23:23 40:23	coma	consent
case	China	16:9,18 18:9	4:9 5:5,19,20,21,24
5:3 7:24 18:9,16,25	68:15	comas	5:24 6:7,19 8:3,6
22:23 23:15,21	chocolate	16:16 18:11	15:23 19:25 32:24
24:19 25:24 32:11	10:10	comatose	36:10 37:2,17 69:19
40:3 43:10,12 45:2	citing	18:20 19:3,6,15	70:17,23
46:12 53:18 54:15	36:22	come	consented
69:15	civil	7:4 47:9	4:16 31:16
cases	70:2	coming	consequence
3:5,7 7:7 15:5 16:6	claim	64:15	20:15
22:18 32:17 67:12	4:17 12:20 13:3,4	commit	consequences
casual	20:21 21:10 35:22	15:6 17:7,8,10	3:13 16:21 20:5,8,19
10:7,22 12:2,16 15:6	42:25 44:18,23	committed	20:22,25 21:13 22:6
15:16 16:3	57:20 69:12 70:9,10	10:19	22:8 25:7,9,10
catastrophic	72:16	common	30:12,16 32:15 33:3
69:24	claims	28:16 29:3 50:3	37:5 55:19 64:8
category	27:5 34:8 36:3,7	commune	consequential
14:24 52:16	class	31:25	52:22 69:24 70:15
causes	27:15,17,20 28:7	community	consequentialism
69:25	47:6	49:13 65:4	26:24 51:12,14
celebration	classes	compared	consequentialist
32:3	6:6 28:25	28:15	51:13 53:4
ceremony	clear	compete	consequentialists
6:12	3:5 4:8,24 6:8 18:19	39:12	28:20
certain	22:5 34:9 35:25	competitions	consider
6:6,6 10:15 11:4	37:3 39:10 49:17	71:16	39:15 51:11
22:13 31:12 40:13	56:14 61:18 63:18	competitive	consideration
47:11,17 64:4 70:19	67:13 71:21	52:6 58:12	60:25 61:3
certainly	clearly	competitiveness	considerations
50:2	41:13 46:5	52:12	70:3
certify	closest	competitors	considered
74:9,12	68:17,18,22	52:19	42:8
change	co-wrongdoer	complaint	considering
5:10	32:22	58:19	61:24
character	coddle	component	contact
37:9 38:9	11:21	39:8	67:9
child	cog	concerns	context
2:20 7:13 8:25 11:13	60:20	70:19	18:6,11 48:5
11:21,25 20:19 21:3	cold	conclusions	contingent
21:6,14 30:5 32:22	60:9	64:11,11	31:6,8
38:21 67:5,15 68:14	colicky	condemn	contradiction
68:20 69:3,15	9:7	30:20	12:7
child's	collection	confined	contrast
6:11	62:23	58:3	63:15

controversial 21:16	42:21	13:9 50:10,19	45:25
convert 55:4	culture 9:10	degree 17:24 62:3 65:20	determine 69:13
convicted 7:8,13	cultures 9:5 68:10	delighted 2:3	determined 29:22
Cornell 60:10	current 62:20	deluded 31:17	deviant 70:21 71:5,6
corollary 37:23	curvy 51:5	demand 66:17	different 4:17 5:13,14 10:6 13:16 33:21 44:15 53:25 68:10
correct 15:3 27:16 34:23	cut 42:15	denies 25:2	difficult 12:7 19:23
correspond 40:13	<hr/> D <hr/>	deny 20:20	dignified 50:18
cost 52:25	dark 20:23	denying 25:16	dignity 50:12
count 73:12,15	data 26:3 61:7	deontological 70:3	directed 40:24 41:6
counterfactual 72:2,8	dating 48:9 49:2 52:9 54:15 55:23 56:11,23 61:24 64:22	deontology 36:25	directing 41:6
counterfactually 72:12	David 10:4 12:9	depend 29:20 32:10 41:11	directly 23:10 34:20 39:14,15
country 6:5	day 33:25 74:18	depending 5:10 6:18	disadvantage 67:10
counts 55:14 73:6,17	deal 66:7	depends 28:3 71:25 72:8	disagree 3:2 36:15
COUNTY 74:5	debate 21:17 48:3	Derek 27:19	disappear 48:17
couple 8:20 15:5 23:3 38:24 46:6	decades 47:8	deserted 14:6	disapproval 22:15 34:3
course 41:17 62:16	decide 28:14	deserve 14:5	disconnect 54:6,10
cousins 68:17,23	deemed 5:7	desire 40:24 41:6,17 46:4,5 46:8,13,14,16,19,20 47:4,5 51:24 57:11	discovered 21:14
criminalize 30:18	deep 31:20 63:2,16	desired 66:14	discriminate 54:14,17
criminalized 2:16	deeply 2:14	desires 56:13	discrimination 54:13 56:20 63:12
criteria 59:11	Deer 42:18	desiring 40:22 41:14 49:7	discuss 37:5 57:12
criterion 35:18	defend 30:4	dessert 53:14	discussed 67:2
cross 5:12 6:5	degradation 35:19,22	determinant 35:17	discussion 33:7 47:13 63:14
cruelty	degrading	determinants	disgusting

38:14,15,16,17 dishonest 59:16 disproportionate 39:25 disrupt 14:5 distant 66:5 distinct 4:6 17:5 distinctive 18:6 19:5 51:10 distinguish 13:20 distinguishing 53:9 district 5:10 doing 11:7,20 23:14,17 66:3 72:4,13,19 doppelganger 62:6,9,19 doubt 14:12 52:10 72:12 draw 33:13 dress 19:8 driven 33:9 duplicate 62:25 duty 13:2,3 44:20,22 70:7 70:8	53:6 57:23 63:3 66:9 eating 10:9 economic 54:24 55:5 71:16 economically 56:22 economics 56:24 effect 57:3 effects 49:23 Egypt 27:22 28:3 68:15 Egyptology 27:19 28:8 eight 8:24 either 14:3 17:21 18:2 39:21 48:9 66:23 elevate 73:8 eliminate 57:25 58:4 emotional 55:20,24 56:14 58:15 58:16 63:16,20,23 64:2 emotionally 56:15 57:9,19 emphasizing 36:5 empirical 20:20 21:9 empirically 29:18,19 employment 54:18 enacting 37:21 endure 11:6 enforcement	7:5 engage 3:14,17 4:19 5:5 21:2 25:25 32:21 engaged 21:25 28:13 31:12 engaging 10:11 30:21 72:3,5 72:15 enjoy 16:15 29:16 enjoyment 11:13 enjoys 20:12 enormous 21:17 36:14,17 41:25 47:11 entirely 69:5 equalize 62:17 escaping 29:4 esotericism 31:4 especially 6:10 56:9 establish 41:5 estimate 6:25 ethics 10:6 ethnic 48:5 evaluate 25:5 eventuates 38:10 everybody 43:25 everyday 54:6 evil 39:22,25 40:4,7,9,12	40:15,16,25 41:4,5 41:7,15 53:19,22,23 evolution 67:15 evolutionarily 66:2 evolutionary 64:3,5,16 65:6,17,18 66:11,20 67:8,10,18 67:19 69:12,14 exactly 19:17 38:12 47:18 63:14 69:10 example 4:21 5:11 24:6 28:24 41:21 47:15 48:13 50:4 examples 42:13 65:13 excellent 17:3 26:17 33:15 42:12 64:20 68:23 68:24 exceptions 61:17 expect 31:22 expected 22:24 30:11,11 experience 16:8 26:2,5,8 37:12 experiment 2:8 explain 10:23 15:17 17:19 19:2 21:6 36:22 54:10 65:7 explaining 18:7 36:24 64:16 explains 65:22 explanation 66:11 69:11 explanations 65:9 exploitation
<hr/>			
E			
<hr/>			
E 74:2,2 earlier 15:22 50:7 east 33:20 49:7,15,20,21 50:4 51:16 52:8,18			

35:20,23 exploitative 13:10,15 50:11 exploited 32:23 explore 60:11 exploring 2:19 extent 15:18 16:16 17:16 externalist 40:21 41:9 extra 28:25 extraordinarily 24:2 extremely 16:25 extrinsic 48:12,23	fan 26:20 fantasies 38:20 41:22,24 42:2 42:5 44:11 fantasized 46:24 fantasy 40:22 43:6,23 44:13 far 13:15 18:9 19:24 34:5,19 41:8 57:18 fascinating 42:19 63:14 favor 15:11 feature 14:13 24:17 56:19 features 53:9 federal 7:13 feel 55:13 70:25 feet 59:15 feldian 13:4 fellating 9:6 felt 32:6 female 51:4 females 21:21 fertility 65:21,21 fetish 16:14 49:25 fetishing 61:6 fetishist 49:5 fetishize 47:17	fetishized 52:10 55:7 59:24,25 fetishizing 61:19 63:4 66:9 fever 51:19 58:11 60:23 fifth 67:22 FILE 1:8 fill 17:14 19:22 62:13 filthy 57:13 find 16:10 19:9 30:2,4 31:7 38:14,15 49:6 51:20 53:11 63:5,13 finds 16:18 43:19 54:9 fine 41:18 42:5,22,24 first 4:21 17:3 21:9,10 44:4 56:10 Floor 1:11 focused 19:25 follow 7:6 force 15:19 forced 41:22 formal 12:23 former 40:3 found 52:13 four-year 6:22 fraction 7:4 framing	27:10 33:17 Fredonia 2:5 free 35:2,4,9 36:6 freely 32:24 friends 34:4 friendship 54:18 fulfillment 46:4,5,8,14,21 full 36:10 42:15 fully 4:25 function 13:9 26:25 35:15 fundamental 2:22 17:21 fundamentally 2:25 funny 19:7 further 15:5 74:12
<hr/> F <hr/>			<hr/> G <hr/>
F 74:2 faces 50:17 fact 2:17 23:21 29:18 43:22 52:17 53:5,13 59:8 73:15 facts 28:3 31:6 32:11 fail 13:16 70:7,8 fairly 68:6 falling 16:20 false 12:14 46:6 53:11 63:24 families 69:10 family 6:12 34:4 61:13			gain 55:6 game 64:14 gatherer 68:21 gatherers 68:9 gay 33:19,21 49:13 general 3:22 12:3 22:6 34:11 50:14 52:20 69:18 generally 17:7 26:22 48:7 64:17 generate

66:22	7:19 11:8 14:14,15	gut	71:12,13
genetic	16:13 20:13 26:23	36:20	harms
68:23	26:24 27:2 28:6	guy	51:16 52:23 53:6
genetically	29:24 30:11,15	42:15	harsh
66:5 68:18	36:24 37:11 39:9,22		30:19
getting	39:24 40:4 41:19	H	harshly
4:9 52:2 69:6,7	42:3,8 50:21 53:20		6:24
girl	66:7 68:25 73:4,11	half	Harvard's
2:11 27:24 28:2		41:22 42:2	27:19
girls	goods	halo	hating
27:13,13 65:15 67:25	14:7 45:20	57:3	39:22,24 40:4 53:19
give	gotten	hand	hatred
8:3,6 15:5 42:13	25:13 41:8	36:21 71:17 74:18	40:5 53:20
65:12	governments	handle	Hawani
given	5:8	44:15	33:7
32:24 50:21	grained	happened	head
gives	41:18 42:5,22,24	31:18,24	24:18 41:12,13 64:14
35:17 52:5	grandma	happening	headons
giving	11:7	21:2 26:12	73:16
5:19	grandmother	happens	hearing
glad	11:19,19 49:2	46:13,18,19 57:16	12:10
42:14,19 47:25	grandmothers	happily	heartbroken
go	9:5,11	60:7	71:18
6:3,11 11:4,5,5 15:20	grapple	happy	hebephilia
23:8,12 24:12 27:3	47:24	49:2	22:4
30:13,17 31:14	great	hard	Hebrew
37:15 40:20 45:13	12:9 21:8 36:13	9:14 10:23 12:21	51:19 58:11 60:23
46:10,13 52:15	59:12 66:13,13	13:11,20,25 14:9	hedonistic
goal	68:16	15:17 18:16 19:17	73:11
8:9 60:11,12	greater	30:4 35:7 45:11	hedons
God	17:24 18:3	46:7 50:5,7,13 51:6	73:12
57:21 58:9	group	53:22,24 54:16 57:7	held
goes	47:17 64:23,25 70:22	57:15 60:17 62:13	2:13 43:16
24:16 37:9	71:24	65:25 66:10,21 71:7	hereunto
going	groups	71:9	74:18
2:6 4:13 11:22 16:22	47:11	Hark's	heterosexual
19:14,20 20:7,10,11	grumpy	39:20	50:15,25 56:7,8
22:16,19 25:4 30:15	72:21 73:3	harm	high
31:5,8,14,15,20	guess	16:8 29:17 47:5	5:4 6:13 24:2,3 31:13
32:10,12,13,15	9:16 14:22 24:4,11	55:17,18 71:14,20	37:14 65:20
33:22 38:24 44:4	29:2 34:22 41:16	72:16	highly
48:25 49:15 52:12	58:14 61:6,7 71:24	harmed	21:16 26:17 27:24
55:12,18 58:13	72:7,9	52:20 71:17,19	31:10 41:9 51:13
60:22 61:4 64:21	guessing	harmful	57:20
66:15,18	47:20	34:2,3 52:18 71:22	hippie
good	Guinea	72:11	31:25
	68:11	harming	

historically 68:13	image 43:8	36:20 54:9	40:2
history 62:16,18,19 68:22	imagination 38:3	independent 2:15 14:14 19:10 46:9	intentions 9:23
hold 11:25 26:14	imagine 2:9,11 12:15 16:9 18:20 31:10 41:14 43:10,13,14 50:10 50:14 51:17 57:4,21 58:21 65:2	India 68:15	interaction 21:7
holds 43:20		indifference 49:21	interest 6:11 18:2,13,18,23 19:11 43:16,20,21 44:9,16 45:11,12,14 46:22,24
homosexual 51:2 71:23		individual 14:3	interested 9:19 74:15
homosexuality 70:22	imagines 43:11	individual's 35:5	interesting 12:11 30:2 64:13
honest 52:25	imagining 43:18	individuals 29:10 44:11 66:4 67:24 72:3	interference 17:25
hook 31:4	immediately 60:13	indulge 72:25 73:2,3	intergroup 48:11
horrendous 26:8 29:12 42:21	immoral 71:2	inequality 63:12	internalism 40:19
horrified 43:17 44:13	impact 33:23	informed 5:4	internalist 24:17 40:17,19
hour 11:4	impasse 25:17	infringe 13:6 54:23 70:9	interpretations 43:3
huge 27:5,6,8 29:6,7 54:24	impermissible 8:7	infringed 17:16,17 50:8 70:12 70:13	interracial 22:12
hundred 5:12	implausible 27:25	infringement 12:18,22 13:7 70:17 71:8,9 72:10	intra 48:11
hunter 42:18 68:8,21	implications 10:21 15:10 54:11 63:11	infringes 13:2	intragroup 48:15,22
hurt 55:13,20 56:14,16 57:9,19 58:7,7,12 58:16,16	important 48:3	initial 3:2	intrinsic 48:12 62:10
hurtful 56:2,2,4	in-principle 32:13	inside 24:18 41:13	intrinsically 26:23 53:10
hurts 50:11 55:24	inaccurate 61:16	instances 7:2	introduces 28:7
hypotheticals 62:17	incapable 16:19	intact 65:3,3	intuition 16:23 64:15
<hr/>			
I			
<hr/>			
idea 4:24 14:17 30:17 38:5 47:9 69:23 70:4	income 54:22	intellect 60:12	intuitions 28:18 48:16 63:16 64:17 66:22
identity 17:15	inconsistent 7:15,21	intellectually 63:21	invisibility 57:6
	incorrect 27:16	intense 52:5 72:6	invisible 57:10
	incredibly	intensity	involve

40:5,7,8 53:14,20 involved 22:3 40:7 involves 39:21,23 irrational 52:8 58:17 Israel 48:18 issue 14:20 17:3,6 18:10 27:9,17,18 37:17,25 38:5 45:10 47:7 61:25 62:22 issues 28:11 33:17 37:3 63:6,17 It'd 42:8 Ithaca 33:21 Ivy 50:2 51:17,21,24 58:9 60:25	2:4 jolly 16:13 Jones 27:23,25 judo 4:22 13:17 34:14 Juliet 6:20 justice 54:21 justified 18:22 50:24 justifies 19:13 justify 19:14 25:15 26:13 50:25 51:3,6 62:11	60:3 61:1 62:1 63:1 64:1,19 65:1 66:1 67:1,6,14 68:1 69:1 69:22 70:1 71:1,4 72:1 73:1,5,13 74:1 kickball 3:25 kidding 52:3 kids 59:3 Kill 19:21 kind 6:13,16 7:24 16:4 21:12,19 25:2 31:21 32:6 43:7 44:8 45:13 49:5 54:20 55:8,17 57:6,8 60:4 62:21 64:7,22 68:5 kinds 16:6 32:17 44:10 70:19 kisses 11:6 know 9:8,13 20:9 29:7,17 29:19 30:10,14,23 30:25 35:11 38:15 41:3 43:18 45:17 57:7 61:14 69:10 knowing 46:9 knowledge 3:12 14:9 45:22 Korean 48:14,14,24 49:2,3	23:16 law 6:15,17 7:5,20 8:18 laws 5:9 6:20 lead 73:16 League 50:2 51:18,21,24 58:9 60:25 learn 11:9 learns 20:13 leave 45:9 leaving 69:23 legal 1:10 7:11 legislation 30:8 LENGTH 1:8 lessen 14:6,7 lessons 4:3,3 let's 8:3,22,24 18:24 28:9 28:10 31:11 39:14 39:14 40:3,20 41:12 45:9,9,13 49:4,24 51:11 58:12 level 5:4,16 10:15,17 11:12,14 69:20 levels 56:22 liberty 30:13 life 14:8 20:15 21:4 45:22 46:10,13 55:19 59:23,23 60:19
J	K	L	
Jacket 42:16 Japan 68:15 Jason 2:23 7:23 19:24 24:24 29:23 31:4 32:9 36:16 47:2 55:11 63:13 67:3,7 72:18,23 73:10 Jason's 51:12 Jewish 48:18,19 50:4 51:20 51:21,22 58:8 60:10 job 1:25 36:24 join 28:13 joined	Kant 34:24,24 Kantian 35:11 keep 37:13 48:25 49:4 58:12 Kershnar 1:9 2:1,4,9 3:1,18 4:1 5:1,23 6:1 7:1 8:1 8:19 9:1 10:1 11:1 12:1,8 13:1 14:1 15:1,13 16:1 17:1,2 18:1 19:1 20:1 21:1 21:8 22:1 23:1 24:1 25:1 26:1,16 27:1 28:1 29:1 30:1,7 31:1 32:1 33:1,14 34:1 35:1 36:1 37:1 38:1,11 39:1 40:1 41:1 42:1 43:1 44:1 44:14 45:1 46:1 47:1,25 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1,22 56:1 57:1 58:1 59:1 60:1	labor 44:22,24,25 45:7 lack 53:14 land 56:12 large	

likelihood 31:13	14:8 40:11,15 45:21 58:23,24 59:12 62:3	2:2 5:2 10:4 15:4,14 31:3 43:5 44:19,20	9:24 24:20
liking 54:2	62:5,8,9,14,22,23 63:2	44:23 58:18 69:17 70:18 72:17	mention 49:16
limiting 7:24	loving 39:22,24 40:4,7,8 53:18,21 62:12	marriage 48:10 54:15,24 56:23 61:24 65:3 71:18 74:14	mentioned 10:25 15:21 36:17 48:2 50:7
lines 33:13 35:24	low 26:4,11	married 10:18 60:6,7	mere 46:8
linked 49:14 63:24	lying 58:21	match 13:17,17	merely 34:21 36:12
list 45:20		math 28:25	met 59:11 60:10
little 12:23 13:11 18:16 19:17 25:20 26:9 45:11 50:12 54:16 65:24	<hr/> M <hr/>	matter 23:20 59:20 66:12 74:16	Metal 42:16
live 12:6 25:19 31:22,24	MAGNA 1:10	matters 44:6 54:4	Middle 33:20
lives 23:8	major 39:8	mean 6:21 38:16 64:6	Mignano 1:24 74:7,22
logical 20:3	maker 12:16 13:21 14:4 19:18,25 23:5 24:12 34:7 36:23 39:3 45:8 50:6 51:9 53:3 63:8,8,9,19 71:14 71:21 72:10	meaning 10:18 37:20	mild 16:6
long 21:13 60:6 69:7	makers 37:4	meaningful 10:16 14:17	miles 5:12
longer 18:22	making 8:23	meaningless 14:12,14	million 7:2
look 18:21 22:21,23,24,25 24:11,18 26:25 28:11,20 32:14 38:14,18 40:10,20 48:24 57:21 59:3 64:21	male 2:10 25:24 56:7	meaninglessness 14:24	misidentify 34:7
looked 21:13 33:24	males 21:19 23:24 56:8,9 67:21 68:20	means 16:5 33:2,8 34:21 36:12 37:2 43:4	misreports 20:19
looking 8:21 27:19 63:22	man 7:10 48:24 60:5 66:12	mechanism 17:18	mistake 2:18,19
loser 71:16	manner 7:16,18	medical 6:7	mistaken 71:3
lot 35:11 38:13 48:4 54:25 55:2 65:10	map 6:18,23 7:6,15,21 21:24	medicalized 11:17	misunderstanding 36:11
lots 4:18 61:15	Marilyn 51:5	Melanesia 68:12	mitzvah 4:2,3,23 28:24
love	Marissa 1:24 74:7,22	men 48:14,18 49:7,15,19 49:21,22 50:4,15 51:20,22,22 57:25 58:3,8 64:24 68:7,7	mitzvahed 28:12
	Mark	mental	mix 37:14
			mom 48:25
			money 55:2
			Monroe 51:5

moral 10:14 16:12,23 56:18	8:6 16:10,18 38:10 43:8,19	obvious 2:16 9:4 20:9 24:14 39:13 53:4 67:17	11:18 62:4 65:23
morality 2:22 30:9	New 1:11,11 2:5 33:21 68:11 74:3,5,8	obviously 24:5	oppressive 50:11
morally 38:7 47:16,20 64:6	non 52:18	occur 7:3 41:18,20,20 42:6	order 10:13
mother 43:15,15	non-consequentiali... 17:13	occurred 71:2	ordering 58:5
move 8:9	noninterference 12:20	occurring 9:10	ordinary 12:4 16:22
movie 42:19	Notary 74:7	occurs 46:19	orgasms 72:6
movies 42:11	notation 39:15	odd 3:22 36:2,4	oriented 61:12,13
murder 17:8	note 49:9	offended 55:14 57:5	ought 5:21
murky 21:11	notion 5:18 9:2 24:2 28:5 34:5,19 36:5 51:15 51:16 65:14	offensive 19:9 49:6 54:9	outcome 74:15
mustache 19:8	Nozick 54:20	oh 30:16	outrage 65:10,22
<hr/> N <hr/>	number 1:25 8:23 23:24 67:21	okay 4:10 8:10,11,11,12 8:14,15,16,17 13:22 14:10 18:14,21,25 26:16 27:11 35:16 40:8 45:24 48:15,17 48:19 49:8 50:9 52:7,11,23 54:14 57:16,21 60:7 62:11 64:4,6,6 70:2	outraged 65:13,23
nature 31:5 59:16	numbers 23:20 67:22	old 2:11 3:3,8,9 8:2,4,5,6 9:3 20:7,12 27:12 27:23 37:10 60:8	outrageous 38:22,23
necessary 6:8	<hr/> O <hr/>	olds 3:6 30:15	outside 41:12
need 31:19 41:4 48:10 73:2	o 28:3	operate 18:10	override 70:15
negative 20:8,14,18,23 22:6,8 22:9,12 25:9 26:5 55:19 64:7	obese 56:20 57:4	opinions 30:20	overrides 69:24 70:2
negatively 37:12	objectification 35:20,23	OPPENHEIMER 2:2 5:2 10:4 15:4,14 31:3 43:5 58:18 69:17 70:18 72:17	owe 13:2,3 70:7,8
negatives 22:22	objectifying 13:10,15	opposed	owes 44:20,22
net 30:15	objection 3:20 32:13		<hr/> P <hr/>
neuroscience 32:4	objections 28:4		pain 22:14
neurotic 31:10	objective 14:7 45:20 53:24		paint 19:7
neutral 21:20,22	obligation 32:18		pair 21:11
never			paradox 46:12
			paradoxes 7:7
			parallel

13:25	peers	pertain	political
part	34:4	47:23	47:12
22:9 37:19,24 71:25	penile	petty	poor
participant	68:4	17:12	37:8
2:12	people	philosopher	poorly
participants	2:24 5:5 7:8 9:21	72:22	44:4 46:13
4:11,12 9:22 30:25	12:18 14:5 15:25	philosophical	popped
participate	16:16 18:17 21:25	47:12	59:10
4:22	24:13,20 29:16	philosophy	pornography
participating	30:18,21 31:25	35:13 64:17 72:20	7:13 38:21
4:2 13:18	32:12 33:24 34:12	73:4	pose
participation	35:13 36:5 37:2,6	physicality	30:23
3:24 9:19 10:2	37:25 38:13 41:16	11:15	position
particular	43:7 44:6,8 48:20	pick	8:2 25:15,20
16:14 31:6,9 43:13	49:6 50:21 54:6,25	12:5,15 16:22 43:24	positions
44:11 47:3	55:2,5,25 57:10	44:4 59:22,24	12:6 63:22
particularly	60:5 61:23 62:14	piece	positive
33:24 36:4 46:21	63:9 65:13,14,23	10:5	21:20,22 22:21 23:25
47:7 48:4 49:8	66:5,7 68:3 69:6,20	place	25:9 26:2
50:21 51:21 52:21	70:18,25 71:15 73:6	31:9 33:19 49:10	possible
68:7	people's	places	31:18
parties	48:16 56:16 60:5	5:14 68:11	practice
74:13	percentage	plausible	15:20 57:14
partner	41:25	25:21	precisely
60:19 66:16	perfectly	play	65:19
partners	16:12 55:8	23:10 64:13 70:21	prefer
34:14 55:16	perform	71:24	40:14 48:14 49:3
parts	23:6	pleasure	preference
33:20	period	10:9 11:11 14:18,19	47:14 48:7,8 49:19
passion	9:17	14:22 15:24 26:22	50:15 51:2,3,11,23
33:9	perky	33:12 39:12 45:16	57:25 58:4 66:25
patient	50:16	45:18 46:2 73:6,7	68:19
16:18	permissible	73:17	preferences
pattern	9:2,18	pleasures	47:10 48:6,9,22 49:9
50:3	person	72:18,24,25 73:2	49:13 50:22,23 51:7
pause	16:23 18:12,20 19:15	plenty	54:12 59:21 63:4
43:6	32:23 35:8,10 43:12	56:9 61:17	64:23,25 65:7
pay	43:14 44:17 45:4,10	PODCAST	pregnant
27:6 55:2	46:24 47:4 52:20	1:2	16:20
pedophile	62:3,4,22,24 70:8,9	point	premarital
37:8,20	70:10	7:19 8:12,13,14,16	10:11
pedophiles	person's	9:21 12:9 19:13	premises
36:18	16:13 19:6 24:18	25:14,23 26:17	64:12
pedophilia	45:6	64:20	prepare
10:24 22:4 36:19	persons	points	4:23
37:4,25	47:6	17:3 33:15,16 38:4,5	prepared

69:7	producing	48:2 49:12 55:3,6	53:8 54:4 68:24,25
preparing	49:22	56:21 68:10 73:18	reasons
28:23	prominence		25:12 50:6 52:14
prepubescent	47:9	R	55:25 56:6,12 67:19
40:22 67:23	properties	R	recital
present	62:4,23	74:2	6:4
13:12,12 45:8	property	racial	recorded
pretty	17:23 19:6 39:19	47:11,17 48:5 54:12	74:11
19:18 50:17 59:6	protected	Raja	reference
65:13 66:25	6:22	33:7	27:15,17,20 28:6
prevents	providing	rape	regard
18:7	65:5 66:6,8	2:21 5:9 6:15,17 7:2	6:15 29:9 44:21,23
price	psychology	7:9,19 15:17 16:2	48:21
27:6 66:18	56:18 60:5,22 61:23	17:5,6,8,9 18:4,7	regarded
primary	Public	22:2 23:22 29:11	43:17,25 44:3
45:25	74:8	41:24 42:2	regardless
principle	publicly	raped	33:2
30:6 32:9	50:20	16:24 42:4	reject
principles	punish	raping	27:9
2:22	6:24	43:11,11,13,14,18	related
probabilistic	punished	ratchet	74:13
25:2,11 26:19,20	29:14	52:4	relation
27:3 28:5 29:5,25	punishment	rational	23:25 61:22
30:3,22	6:24	35:3,4,9 36:6	relationship
probabilities	purely	reach	10:19 59:17
23:7 25:8 27:10,11	40:18 61:20	25:17	relationships
27:21 31:8 32:8	purest	reaction	22:13 60:15
37:13	56:11	36:20	relevant
probability	pursued	reading	33:18 34:20 35:7
20:25 23:9 26:4,11	7:16	72:7	56:15
31:22 37:15	push	real	remove
probably	20:4 25:12,22	14:24 18:10 48:18	30:3
14:25 22:3 38:23	put	50:15 51:15 54:5	replaceable
41:25 53:7,16 65:4	15:11 21:18 22:25	61:23	60:20
72:20	48:6	really	replacement
probe	putting	3:14 4:7 6:8 13:13,14	62:25
63:18	29:8	16:15 19:20 24:3	report
problem		28:14,14,21,22	9:9 23:24 24:3 26:2
5:23 15:15 63:2,3	Q	38:18 39:5 40:5	37:11 68:2
71:25	question	42:3 51:15,20 60:18	reported
problems	14:21 26:6 37:24	63:10,18 72:21	1:24 21:19,22 68:4
28:7 65:8	41:2 69:18	realm	reports
process	quick	43:6	9:5
43:23	28:4	reason	reproduce
produce	quite	18:11 20:6 27:8 39:4	66:15
22:19	9:4 10:23 21:10 27:8	39:5 41:23 47:19	repugnant

47:16 requisite 3:12 resident 20:3 resources 65:5 respect 35:5 respected 35:8 respond 20:17 37:23 response 20:9 24:25 55:12 63:24 64:2,3 responses 47:22 63:17,20 68:5 resulting 25:10 results 55:10 rid 51:23 52:2 58:10 right 8:9,19 12:17,18,19 12:19,22 13:5,6,7 14:20 15:13 17:2,15 17:17,21,22,22 19:13 20:5 22:10,16 23:13,21 25:3,21 26:25 28:6 30:7 32:8 34:22 36:23 38:5,23 39:3,5,7 41:3,4,10 42:14 45:3 48:23 49:6,25 50:8,24 51:19,21 52:5,11 53:15 55:24 56:6 58:5 65:2 68:13 70:5,10,17 71:8,9 72:2,9 73:7 rightness 23:10 25:6 rights 18:10,15,21 19:10 20:2 34:10,11,15,16	34:18 35:5,7,15 36:25 37:16 54:23 70:12,14,24 risk 21:5 22:23 23:2,4,5,6 23:16 24:4,10,11 29:6,7,9,16 30:23 risky 24:5 Robert 54:20 Roger 36:13 romantic 48:8 51:10 66:25 Romeo 6:20 rough 4:24 roughly 21:18 24:7 route 20:21 37:6 rule 6:13 30:9 32:9 rules 5:14 ruling 27:7 run 6:5 runner 51:4,4 54:3 Rynd 21:12 <hr/> <div style="text-align: center;">S</div> <hr/> S&M 71:23 sacred 32:20 sad 57:8 satisfaction 53:15 satisfied	14:25 satisfy 70:7,8 saying 20:18 22:23 26:13 29:15 57:18 says 10:7 14:10 15:9 25:3 26:25 32:3 58:24 59:2 scale 30:12 52:22 scales 44:7 scar 21:4 scat 70:21 71:24 scenario 42:25 scenarios 42:23 school 11:5 seated 63:16 second 9:2 17:16 25:23 27:9 27:16 46:12 54:19 68:8 secretly 57:24 sedated 11:16 see 9:15 12:13,14,21 13:11,16,21,25 14:9 18:16 19:17 31:14 33:25 35:7,12,21 42:15 43:3 45:12 46:6,7 50:3,5,7,13 51:6 53:22,25 54:16 57:15 65:10,25 66:10,21 68:8,9,13 68:16,19 71:7,10,23 seeing	33:10 seen 47:16 self 46:22 62:10,10 68:2 68:3 sense 17:25 28:16 29:4 40:15 44:25 45:6 65:18 sentenced 7:17 separate 62:2 SERVICES 1:10 set 5:20,22,25 17:23,24 27:14 37:16 43:21 43:22 45:16,18,19 45:20,24 46:3 74:18 setback 18:13 sets 14:2 46:23 setting 27:17 sever 27:4 severe 18:4 28:7 29:13,17 severely 29:14 severs 28:5 sex 2:10,20 3:11 4:6 5:5 7:9,10,12 8:5,25 10:7,8,11,14,22 11:10,18,25 12:2,4 12:16 15:6,16,24,24 16:3,10,15,17 19:3 19:15 20:6 21:7,14 24:8 25:25 27:21,23 28:2 29:10,15 30:5 30:14 31:12 32:2,7
--	--	--	--

33:8 34:5,19,20 36:8 41:22 48:9 54:15 61:24 67:5,16 68:14,20 69:3,15,20 70:22 71:6,23,23,24 72:5 sexiness 42:9 sexism 69:25 sexual 1:9 2:1,7 3:1 4:1 5:1 6:1 7:1 8:1 9:1 10:1 10:6 11:1,22 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 40:21 41:1 42:1 43:1 44:1,10 45:1 46:1 47:1 48:1,5,10 49:1 50:1 51:1 52:1 53:1 54:1,12 55:1 55:16 56:1 57:1 58:1 59:1 60:1,16 61:1,20 62:1 63:1 64:1 65:1 66:1 67:1 67:9 68:1 69:1 70:1 70:20 71:1 72:1 73:1 74:1 sexuality 61:9 69:6 sexy 41:19 42:7,25 51:20 Shane 42:14 shape 54:8 share 64:10,12 shared 62:15,18,19 show	4:21 23:18 29:21 41:5 50:15 67:23 showing 3:25 shows 22:17 54:13,19 55:7 significance 10:12,15 12:12 significant 10:20 20:24 significantly 72:14 similarly 18:18 simple 33:12 simplicity 14:15 sister 48:25 sister's 6:4 situated 18:18 situation 3:10 11:12 27:12,13 skeptical 41:9 57:20 72:16 snowy 60:9 social 57:5 socially 57:10 societal 33:18 societies 68:21 society 22:10,11 31:11,21 32:5 56:21 68:8 solely 35:15 61:9 solitude 59:23 someone's	13:6 35:14 50:12 70:12,13 something's 12:24 son 28:12 sort 9:9,24 13:24 23:25 26:24 29:15 34:23 35:18 49:14 52:17 53:14 56:18 58:22 61:15,22,22 62:17 64:23 65:2,6 66:22 sorts 4:4 10:25 42:10,20 56:21 68:9 sounds 50:20 Southeast 59:9 special 15:23 specifically 36:25 speculating 67:16 speed 64:22 sport 35:13 sports 15:20 spouse 34:13 58:22 SS 74:4 stalemate 25:18,19 standard 2:13 45:14 standardly 34:16 start 2:8 8:3,8 33:5 60:15 67:12 state	2:5 6:18 19:4 74:3,8 statement 3:2 53:13 56:17 states 5:13 6:20 9:25 24:20 statistically 71:6 statutes 7:14,14 statutory 2:21 5:9 6:15,17 7:2 7:9,19 22:2 23:22 STD 16:22 Stephen 1:9 2:1,4,7,9 3:1,18 4:1 5:1,23 6:1 7:1 8:1,19 9:1 10:1 11:1 12:1,8 13:1 14:1 15:1,13 16:1 17:1,2 18:1 19:1 20:1 21:1 21:8 22:1 23:1 24:1 25:1 26:1,16 27:1 28:1 29:1 30:1,7 31:1 32:1 33:1,14 34:1 35:1 36:1 37:1 38:1,11 39:1 40:1 41:1 42:1 43:1 44:1 44:14 45:1 46:1 47:1,25 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1,22 56:1 57:1 58:1 59:1 60:1 60:3 61:1 62:1 63:1 64:1,19 65:1 66:1 67:1,6,14 68:1 69:1 69:22 70:1 71:1,4 72:1 73:1,5,13 74:1 stereotypes 61:15,19 stick 8:17,18 29:24 stories 65:7 straight 50:9
---	---	--	--

strange 63:19	66:17	19:16 20:22 21:9	6:12 11:6
Street 1:11	support 61:8	22:22 23:21 33:11	theft 17:12
strict 28:19	suppose 11:23 32:12	37:7 39:14,18,19	theoretical 61:25 62:21
strikes 27:24 58:17	sure 3:18 18:5 34:9 39:7	40:3 41:12 48:7	theories 35:12 62:14
strong 36:20 49:12,25 52:9	47:18 58:3,15 67:6	56:19 60:5,12	theory 46:4,5,21,22 63:2
55:8 56:21 58:13	surprising 67:22	takes 7:11	therapy 31:19
63:11,15,20,23 64:2	surprisingly 19:23 67:21	2:6 23:22 56:7	they'd 52:2 58:11 72:13,19
69:2,14	suspect 4:9 33:19 58:6	taste 48:18	thin 50:16 51:3 54:2,2
stronger 61:5	sweet 56:4	taxonomy 13:4	thing 11:18 19:16 21:25
strongly 43:16 55:4	sympathetic 26:18 51:14	teenage 22:2 65:15,15	26:12 28:15 29:13
structure 3:20	sympathize 57:6	teenagers 23:23 24:6,7,10	31:18,23 33:3 39:4
structured 9:20		25:25 66:24 67:5	39:5 48:21 58:10
studies 21:11,16 29:21 49:17	T	teens 40:23	59:7
study 49:18 64:22	T	teeth 11:3	things 2:20 3:22,23 4:4 5:8
studying 28:25	taboos 1:9 2:1,7 3:1 4:1 5:1	tell 2:19 57:22,23 65:6	6:10 8:20 10:25
stuff 59:13	6:1 7:1 8:1 9:1 10:1	tells 8:25	14:18 15:19,21
suddenly 47:9	11:1 12:1 13:1 14:1	ten 46:17	19:12 21:23 22:5,10
suffer 55:19	15:1 16:1 17:1 18:1	tend 5:6	23:3 26:22 32:14
suffering 22:14	19:1 20:1 21:1 22:1	tension 12:4	38:24 40:6 42:7
sufficient 10:17 69:19	23:1 24:1 25:1 26:1	term 21:13 69:8	45:22 49:14 50:17
suggest 7:24	27:1 28:1 29:1 30:1	terms 28:17 29:4 55:5	56:25 58:14 59:19
suggests 49:18	31:1 32:1 33:1 34:1	56:23,24 57:2 62:13	61:14 66:21 67:2
Superb 38:11	35:1 36:1 37:1 38:1	65:5,17,18 66:9,20	68:12 70:23 71:22
superficial 11:14	39:1 40:1 41:1 42:1	69:12	73:15
supply	43:1 44:1 45:1 46:1	terrible 29:13	think 2:17,18,24 3:21 4:5
	47:1 48:1 49:1 50:1	test 67:20 68:6	5:6,21 6:16 7:18
	51:1 52:1 53:1 54:1	thank 52:15	9:16,16 10:2,17
	55:1 56:1 57:1 58:1	Thanksgiving	11:8 12:8,12 14:22
	59:1 60:1 61:1 62:1		14:23 15:2,16,22
	63:1 64:1 65:1 66:1		17:5,13,20 18:4
	67:1 68:1 69:1 70:1		19:4 21:21 22:8
	71:1 72:1 73:1 74:1		23:4,5,9,12 24:11
			27:3,5 28:10,17,20
			29:3,6,9,17,23
			30:25 31:3,16 33:14
			33:17 34:6,22,23,24

36:7,10 38:12,13,13 39:16 40:18,19 41:7 41:16,17 42:3,11,22 44:6,8,12,17 45:4,7 45:14,25 46:4,14,20 46:23 47:3,5 48:17 52:7,14,15 53:5,6 53:15 54:4,7 55:23 59:14,25 60:14,18 60:21 61:3,5,21 62:11 64:19,21 65:10 67:19 69:21 70:16,20 71:5,11,13 71:20 72:9,17 73:10 73:12 thinker 45:5 thinking 24:16 63:25 67:4 thinks 10:22 33:7 44:5,17 44:19 48:24 third 27:18 37:6 68:12 Thomas 39:20 thorny 47:7 thoroughly 60:13 thought 2:8 13:8 18:24 24:22 38:3,7 60:20 64:8 67:3,11 three 8:11 28:4 33:15 three-year 6:21 threshold 5:7 8:22,23 thumb 30:9,12 tight 50:16 time 3:24 16:13 19:14	20:14 21:4 28:23 32:2 34:11 36:9 37:11 46:15 60:6 71:15 times 56:9 tiny 7:4 titillation 11:20 today 2:3 27:24 28:2 64:4 65:11 68:21,22 token 58:20 told 49:12 touch 34:12,13,14 tournament 4:22 track 56:22,24 57:2 61:21 transaction 13:14 TRANSCRIPT 1:2 transcription 1:7 74:10 transfer 54:21 trauma 31:21 32:6 treat 34:25 35:2,3 36:8,12 treated 35:10 43:25 44:3 treating 35:14 58:20 treatment 6:7 true 9:8,13,14,14 18:17 42:10 50:13 53:12 61:15 67:25 68:5,14 68:14 73:17 74:10	truly 19:9 try 7:25 12:15 19:22 36:21 trying 5:17 30:18 twelve 2:11 3:3,5,8,9 7:25 20:7,12 37:10 two 3:19 7:8 8:11 10:5 12:6 13:20 15:9 17:2,14 20:16 27:5 36:10 40:9 43:3 44:15 46:3 54:11 58:14,16 type 25:16 51:4 53:11 58:21 typically 35:12 <hr/> U <hr/> unattractive 52:13 unaware 43:21 unclear 5:25 44:7 63:21 uncomfortable 11:24 underage 29:10 undergraduate 51:24 underlying 59:13 understand 3:11,13,16 4:7,20,25 71:5 understanding 4:13,14,15 unequal 54:22 55:9 uneven	7:16,17 unfortunate 57:17 60:19 unique 59:5 University 2:5 unjustified 50:24 unwilling 3:6 4:18 29:10 upset 48:20 63:10 use 13:24 17:18,20 28:22 68:4 uses 34:21 usually 14:17 utilitarian 20:4 22:20 25:5,11 73:12 utilitarianism 25:3,16 26:19,21 27:4,7 29:5,25 30:3 30:22 37:5 utility 22:24 <hr/> V <hr/> vague 7:20,20 35:19 valid 70:16 valuable 66:2 value 55:3 valued 59:17 values 61:11 variant 27:18 various
--	--	---	---

25:12 52:14	12:18,19 34:10,10,11	we've	37:18
vast	34:15,16,17 35:25	19:24 41:7 67:2	win
69:25	64:9	wealth	71:15,17
Vat	waived	54:22	window
1:9 2:3	35:6	weighting	6:22
versus	walking	59:21	wins
17:22 44:2 52:24	60:8	Welcome	39:13
vice	want	2:2	WITNESS
37:21 38:24 39:18,19	4:10 7:23 8:16 11:25	went	74:17
40:2,3,17,18 41:10	15:4 16:17 20:4,5	27:21	wives
53:16,17 63:9	20:21 23:3 25:23	WERBELOFF	56:10
vicious	33:11,13 37:13 47:2	2:23 7:23 19:24	woman
37:8 39:2,2,10,16,17	47:5 51:25 52:2,4	24:24 29:23 36:16	49:3,3 53:12 55:13
40:11 43:2,4 47:21	55:25 56:3,4,5,11	47:2 55:11 63:13	57:4 59:7,10 60:10
viciousness	58:6 59:17 65:19	67:3,7 72:23 73:10	66:12
37:19,20 38:4 39:8	wants	weren't	women
video	2:10	64:5 73:17	24:3 41:22,25 48:15
7:11	war	West	48:19 49:7,8,16
view	70:2	1:11	50:5,16 51:16,18,25
2:13 3:22 5:3 10:7,8	wasn't	whatsoever	52:8,13,18 53:6
10:12,13,22 12:2,3	26:8	32:5	54:2 56:19 57:18,23
12:12 15:7,16 16:2	watch	WHEREOF	60:25 64:23,24
16:4,4 19:19 21:20	42:10,14,15,17	74:17	65:16 66:10
21:23 22:9 30:5	watched	whispering	women's
36:2,4 73:14,15	42:19,20	58:23	49:20
views	watching	white	wonderful
10:6 15:9,10 22:12	38:20 40:6	49:7,15,19,21 57:25	59:4
violate	way	58:3	words
15:22	6:16 9:20 12:14 15:8	who've	11:14 43:20 44:5
violation	22:11,25 25:13,15	60:6	55:15 59:22
70:24	25:22 27:14 29:8	widely	work
violence	33:23 40:13,14,20	2:13	12:10 36:14
42:21	44:6,7 54:21,22	widespread	working
violent	55:9 59:3 63:22,25	68:6	9:11
42:11 44:10	64:10 74:15	wife	works
virtue	ways	7:11,12 62:8,20	9:12 72:8
14:8 40:18 45:22	3:19 12:13 17:14	wife's	world
virtuous	19:8 20:16 40:9	62:6,9	40:14 44:2,5 55:23
56:13	44:15 46:7 57:13	willing	61:23
voluntary	61:18	2:12 3:4,8,10,14,16	worlds
4:11	we'll	3:21 4:11 9:19,22	43:24
vote	58:4	9:25 25:19 29:15	worry
57:24	we're	30:14,24 31:12	52:21
	2:6 6:3 9:18 11:7	willingly	worse
	23:22 28:18 30:8	32:21	7:20 17:7,8,9,11,19
	42:14 52:24 56:12	willingness	22:7 23:8 46:11
<hr/> W <hr/>			
waive			

60:2 72:21	yeah	2
worst	5:2 9:16,21 12:8	2023
31:17	22:18 23:15 24:4,9	74:19
worth	29:2,24 33:17 36:10	21
12:10	38:11 55:22 57:8	60:8
worthy	60:18 63:5 73:14	24%
14:19,21 23:16	year	26:12
wrestling	2:11 3:3,5,8,9 7:3 8:2	26%
13:17 28:13 57:13	8:4,5,6 9:3 20:7,12	26:7
written	27:12,23 30:14	
47:14	37:10 60:8	3
wrong	years	320
2:14,15,17,25 9:3,15	22:3 31:20 46:17	1:11
10:3,11 12:16,21,24	65:21	37th
12:25,25 13:5,21,23	York	1:11
14:11,16,23 15:17	1:11,11 2:5 33:22	
15:18,22 16:3,6,25	74:3,5,8	4
18:5 19:2,5,7,12,15	young	40
19:18,20,25 20:6	32:2 40:23 48:14,14	31:20
22:17 23:5,6,19	48:17,19 68:7,7,20	45%
24:12 28:9 29:13	younger	21:21
30:6 31:17 32:16	24:8	
33:3 34:7 36:22		5
37:3 38:9,18 39:3,4	Z	50%
39:4,7 40:23 43:9	0	24:7
44:9 45:8 50:6 51:9	0.2	58:11
53:3 54:7,14,16	7:4	1:8
55:25 62:25 63:7,19		6
69:21 70:5,6,11	1	7
70:14 71:10,11,14	100%	7
71:15,20 72:10	73:13	27:13
wrongfulness	10018	7.5
18:8	1:11	6:25
wrongly	12th	74%
70:4	1:11 74:18	21:19 25:24
wrongness	13	
10:24 17:4 21:6	27:12,23	8
23:11 25:6	15	866)624-6221
wrongs	30:14	1:12
34:6 70:5	16	
wrote	5:15 6:19 24:7 27:14	9
10:5	17	974466
	6:19	1:25
X	18	
	5:15 6:19 32:7	
Y		